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NUMBER:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

ALTON J. BAILEY, Petitioner

versus

RYAN STEVEDORING COMPANY, INC., ET AL., Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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1988

QUESTIONS PRESENTED

1. Whether the petitioner, ALTON J. BAILEY, as the "prevailing party" in this action, is entitled to and should be awarded attorney's fees where upon the proof of the allegations of his complaint and the probative facts adduced on the trial of the case the Court of Appeals reversed the judgment of the District Court upon a findings of fact that the Respondents had empirically engaged in, and were at the time of trial, through "collective bargaining agreements," engaging in race-based discrimination in employment practices, policies, customs and usages against the Petitioner and others similarly situated in violation of the Civil Rights Act of 1964, Title VII, § 703(a)(1 and 2) and (c)(1, 2 and 3), 42 U.S.C. § 2000e-2(a)(1 and 2) and (c)(1, 2 and 3); and upon such findings of fact and conclusions of law the Court of Appeals ordered and mandated that the racially segregated local unions be merged; and that the Respondents, the racially segregated local unions and the stevedoring companies, be permanently enjoined from engaging in such discriminatory employment practices, policies, customs and usages and from further participation of engaging in and entering into "collective bargaining agreements" which deprived or tend to deprive Petitioner and others similarly situated of employment opportunities or otherwise adversely affect their statuses as employees because of their race; and from which judgment of the Court of Appeals the Respondents' application for Writ of Certiorari to the Supreme Court of the United States was denied?

2. Whether Civil Rights plaintiff, ALTON J. BAILEY, as the "prevailing party" in this Title VII employment discrimination action is entitled to and should be awarded reasonable attorney's fees, taxable as costs pursuant to

the Civil Rights Act of 1964, Title VII, § 706(k), 42 U.S.C. § 2000e(k), for his Attorney who in the capacity of Private Attorney General successfully vindicated important civil and constitutional rights and gained substantial employment benefits of public interest for Petitioner and other members of the black race similarly situated by suing and obtaining for them permanent injunctive relief against the Respondents, enjoining the Respondents from continuing to maintain racially segregated local unions and from engaging in and entering into "collective bargaining agreements" by which jobs on a 50%-50% basis were allocated to each of the racially segregated local unions where two-thirds of the work force was in the black local union and one-third of the work force was in the white local union and, as such, denied and deprived and tend to deny and deprive Petitioner and the other black members of Local 1830 equal employment opportunities with that of the white members of Local 1833 in violation of the Civil Rights Act of 1964, Title VII, § 703(a)(2) and (c)(2), 42 U.S.C. § 2000e-2(a)(2) and (c)(2)?

3. Whether the amounts of $300,135.00, as attorney's fees for Petitioner's Attorney of Record, and $3,637.92, as out-of-pocket costs and expenses, are fair and reasonable inasmuch as this case was unsuccessfully tried twice in the District Court; but, nevertheless, the Petitioner appealed and successfully prevailed on both appeals, and the Respondents' applications for Writs of Certiorari to the Supreme Court of the United States on both occasions were denied; and, therefore, should the requested attorney's fees for Petitioner's Attorney of Record be enhanced, rather than be denied, for superior performance in order to serve the statutory purpose of the enactment of the attorney's fees provisions of the Civil

Rights Act of 1964, Title VII, to enable Civil Rights plaintiffs like ALTON J. BAILEY to obtain legal assistance?

TABLE OF CONTENTS

	Page(s)
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI	1
Opinions Below	1
Jurisdiction	2
Statutory Provisions Involved	3
Statement of the Case	3
Reasons for Granting the Writ	14
Conclusion	16
Certificate of Service	17
APPENDIXES:	19
Opinion of the Court of Appeals (of which review is sought)	A
Opinion of the Court of Appeals denying rehearing	B
Decision of the Court of Appeals (Bailey v. Ryan Stevedoring Co., Inc., et al., 528 F. 2d 251)	C
(Bailey v. Ryan Stevedoring Co., Inc., et al., reh dn 533 F. 2d 976)	D
(Bailey v. Ryan Stevedoring Co., Inc., et al., cert dn 429 U.S., 1052, 97 S. Ct. 767, 50 L. Ed. 2d 769)	E
Decision of the Court of Appeals (Bailey v. Ryan Stevedoring Co., Inc., et al., 613 F. 2d 588)	F
(Bailey v. Ryan Stevedoring Co., Inc., et al., reh dn 618 F. 2d 781)	G

TABLE OF CONTENTS — CONTINUED

	Page(s)
(Bailey v. Ryan Stevedoring Co., Inc., et al., cert dn 450 U.S. 964, 101 S. Ct. 1479, 67 L. Ed. 613)	H
Opinion of the District Court	I
Judgment of the District Court	J
Decision of the District Court (Bailey v. Ryan Stevedoring Co., Inc., 443 F. Supp. 899)	K
Civil Rights Act of 1964 (42 U.S.C. § 2000-2(a)(1) and (2))	L
Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(c)(1, 2 and 3))	M
Civil Rights Act of 1964 (42 U.S.C. § 2000e-5(k))	N
Complaint	O
Brief of Appellant on Appeal	P
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO v. Alton J. Bailey, 429 U.S. 1052, 50 L. Ed. 2d 769, 97 S. Ct. 767.	Q
Motion for Relief From Judgment Under Rule 60(b)(5) and (6).	R
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO v. Alton J. Bailey, 450 U.S. 964, 67 L. Ed. 2d 613, 101 S. Ct. 1479.	S

TABLE OF CONTENTS — CONTINUED

	Page(s)
Motion for Attorney's Fees, Costs and Expenses	T
Affidavit of Attorney in Support of 'Motion for Attorney's Fees	U
Memorandum of Authority in Support of Motion for Attorney's Fees	V
Affidavit of Richard C. Cadwallader, Esq.	W
Affidavit of Arthur Cobb, Esq.	X
Affidavit of Joseph A. Gladney, Esq.	Y
Affidavit of William F. Wessel, Esq.	Z
Affidavit of Joseph F. Keogh, Esq.	AA
Motion for an Early And Expedited Trial	BB

TABLE OF AUTHORITIES

CASES:	Page(s)
Bailey v. Ryan Stevedoring Co., Inc. (CA5 1976) 528 F. 2d 551, reh dn 533 F. 2d 976, cert dn 429 U.S. 1052, 97 S. Ct. 767, 50 L. Ed. 2d 769.	2
Bailey v. Ryan Stevedoring Co., Inc. (CA5 1980) 613 F. 2d 588, reh dn 618 F. 2d 781, cert dn 450 U.S. 964, 101 S. Ct. 1479, 67 L. Ed. 2d 613.	2
Bailey v. Ryan Stevedoring Co., Inc. (USDC/MD/LA 1978) 443 F. Supp. 899.	2
Bowie v. Colgate-Palmolive Co. (1969) 416 F. 2d 711, 2 FEP Cases 121.	8
Brown v. Culpepper (CA5 Ga. 1977) 559 F. 2d 274, reh dn 561 F. 2d 1177.	12
City of Riverside v. Rivera (decided June 27, 1986) __ U.S. __, 103 S. Ct. 2686, __ L. Ed. 2d __.	14
Commonwealth Oil Refining Co., Inc. v. E.E.O.C., (CA5 1983) 720 F. 2d 1383.	14
Core v. Turner (CA5 Miss. 1977) 563 F. 2d 159.	12
East Texas Motor Freight System, Inc. v. Rodriguez (1977) 431 U.S. 395, 97 S. Ct. 1891, 52 L. Ed. 2d 453.	10
Henderson v. Ft. Worth Independent School District (CA5 Tex. 1978) 574 F. 2d 1210, on reh 579 F. 2d 373, and on reh. 584 F. 2d 115.	13
Hensley v. Eckerhart (1983) 461 U.S. 424, 103 S. Ct. 2421, 77 L. Ed. 2d 1310.	13, 14

TABLE OF AUTHORITIES — CONTINUED

	Page(s)
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO v. Bailey (1977) 429 U.S. 1052, 97 S. Ct. 767, 50 L. Ed. 2d 769.	9, 10
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO v. Bailey (1981) 450 U.S. 964, 101 S. Ct. 1479, 67 L. Ed. 2d 613.	10, 11
STATUTES:	
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1201(c)	2
Civil Rights Act of 1964, Title VII, § 703 (a)(1) and (2), 42 U.S.C. § 2000e-2(a)(1) and (2)	passim
Civil Rights Act of 1964, Title VII, § 703(c)(1, 2 and 3), 42 U.S.C. § 2000e-2(c)(1, 2 and 3)	passim
Civil Rights Act of 1964, Title VII, § 706(k), 42 U.S.C. § 2000e-5(k).	passim
OTHERS:	
None.	

NUMBER:

IN THE

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OCTOBER TERM 1986

ALTON J. BAILEY, Petitioner

versus

RYAN STEVEDORING COMPANY, INC., ET AL., Respondents

PETITION FOR WRIT OF CERTIORARI

The petitioner, ALTON J. BAILEY, respectfully petitions for a Writ of Certiorari to review the judgment of the Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, infra, 1a-5a), of which review is sought, is not for publication;

and, therefore, not reported. The Petition for Rehearing En Banc was denied (App. B, infra, 1b-2b).

Prior decisions of the Court of Appeals in this case are reported, and officially cited as follows:

> *Bailey v. Ryan Stevedoring Co., Inc.*, 528 F. 2d 551 (App. C, infra, 1c-16c), reh dn 553 F. 2d 976 (App. D, infra, 1d-4d), cert dn 429 U.S. 1052, 97 S. Ct. 767, 50 L Ed. 2d 769, (App. E, infra, 1e).

> *Bailey v. Ryan Stevedoring Co., Inc.*, 613 F. 2d 588 (App. F., infra, 1f-7f), reh dn 618 F. 2d 781 (App. G, infra, 1g), cert dn 450 U.S. 964, 101 S. Ct. 1479, 67 L. Ed. 2d 613 (App. H, infra, 1h).

The opinion of the District Court (App. I, infra, 1i-5i) is not reported.

Prior judgment of the District Court (App. J, infra, 1j–2j) is not reported.

Prior decision of the District Court is officially reported as:

> *Bailey v. Ryan Stevedoring Co., Inc.*, 443 F. Supp. 899 (App. K, infra, 1k-10k).

All of the foregoing are set forth at length in the Appendix.

JURISDICTION

The opinion of the Court of Appeals (App. A, infra, 1a-5a), of which review is sought, was entered December 17, 1986; and the denial on Suggestion for Rehearing

En Banc (App. B, infra, 1b) was entered January 12, 1987.

Under the provisions of 28 U.S.C. § 2102(c), the time for filing the hereof Petition for Writ of Certiorari expires Saturday, April 12, 1987.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are:

1. Civil Rights Act of 1964, Title VII, § 703(a)(1) and (2), 42 U.S.C. § 2000e-2(a)(1) and (2) (App. L, infra, 1L).

2. Civil Rights Act of 1964, Title VII, § 703(c)(1, 2 and 3), 42 U.S.C. § 2000e-2(c)(1, 2 and 3) (App. M, infra, 1m).

3. Civil Rights Act of 1964, Title VII, § 706(k), 42 U.S.C. § 2000e-5(k) (App. N, infra, 1n).

The pertinent texts of the foregoing are set forth in the Appendix.

STATEMENT OF THE CASE

The petitioner, ALTON J. BAILEY, who as plaintiff, on March 11, 1971, instituted this Civil Rights action in the United States District Court for the Middle District of

Louisiana. In his Complaint (App. O, infra, 1o-44o) it is particularly, but not exclusively, alleged, viz:

Paragraph I:

"...The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by:

a) 42 U.S.C. § 2000e et seq., providing for injunctive and other relief against racial discrimination in employment.

* * *

c) This is also a suit for declaratory judgment of the rights established under Title VII of the Civil Rights Act of 1964.

* * *

Paragraph III:

This is a proceeding for a "Declaratory Judgment" as plaintiff's rights and for a preliminary and permanent injunction, restraining RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROGUE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, ... from maintaining a policy, practice, custom or usage of: (a) discriminating against plaintiff and other Negro persons in the class because of race or color with respect to compensation, terms, conditions and privileges of em-

ployment, ... and (i) to restrain the defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, from maintaining racially segregated labor organization in violation of Title VII of the Civil Rights Act of 1964.

* * *

Paragraph VI:

The defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, INC., and BATON ROUGE MARINE CONTRACTORS, INC., have instituted and maintained the following practices, policies, customs and usages which violate Title VII of the Civil Rights Act of 1964:

a) Employ persons according to their race and color by dividing jobs between the defendants, LOCAL 1830, comprised entirely of Negro persons and LOCAL 1833, comprised entirely of White persons.

b) The said defendants deny Negro persons equal employment opportunities on the ground of their race and color, since they allocate approximately fifty (50%) percent of the jobs available to persons who are members of Local 1830 and the remaining fifty (50%) percent to persons who are members of LOCAL 1833. LOCAL 1830 has approximately 200 members and LOCAL 1833 has approximately 100 members. Thus, White persons who comprised the membership of LOCAL 1833 have twice as great an opportunity to secure employment with the companies as the Negro persons who are members of LOCAL 1830.

* * *

Paragraph [Inadvertently unnumbered.]:

The defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, have instituted and maintained the following practices, policies, customs and usages which violate Title VII of the Civil Rights Act of 1964:

a) Both of said defendants are parties to "collective bargaining agreements" with the defendants-employer which give recognitions to racially segregated labor organizations and agreed to the allocation of jobs on a fifty (50%) percent basis to the membership of the racially segregated labor organizations.

* * *

Paragraph VII:

On information and belief, plaintiff alleges that the Collective Bargaining Agreements between the defendants-labor-organizations and the defendants-employers in other respects deny Negro persons equal employment opportunities in violation of Title VII of the Civil Rights Act of 1964.

* * *

WHEREFORE, plaintiff, ALTON J. BAILEY, prays that this Court advance his case on the Docket, order a speedy Hearing at the earliest practicable date causing this case to be in every way expedited and upon such Hearing to:

1. Grant plaintiff and the class he represents a permanent injunction, enjoining the defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., and BATON ROUGE MARINE CONTRACTORS, INC., from

* * *

c) employing persons according to their membership in racially segregated labor organizations.

* * *

2. Grant plaintiff and the class he represents a Permanent Injunction, enjoining the defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATIONS, AFL–CIO, from continuing to maintain racially segregated labor organizations.

* * *

Plaintiff further prays that this Court will allow him his Court costs, reasonable attorney's fee and such further or alternative relief as may appear to the Court to be equitable and just.

On April 8, 1974, the plenary trial, by bench, on the merits was held. At the conclusion of the trial, the Trial Judge found that:

1) the plaintiff, ALTON J. BAILEY, was not personally discriminated against;

2) the Plaintiff was not representative of the class;

3) Defendants maintained segregated unions based on race; and

4) neither Plaintiff nor the class he represented was discriminated against in the issuance (allotment) of work to the racially segregated union on a 50%-50% basis where two-third (2/3) of the work force was in the black union and one-third (1/3) in the white union. The trial Court dismissed the Plaintiff's lawsuit in total.

The Petitioner appealed the decision of the Trial Court to the Court of Appeals, Fifth Circuit; where, on appeal, in his written Brief (App. P, infra, 1p-17p), Petitioner presented the following issues for consideration, viz:

1. Whether, the plaintiff, ALTON J. BAILEY, a black male, can maintain a class action for discrimination on behalf of all blacks similarly situated against the defendants, notwithstanding that a total of 204 members of LOCAL 1830 out of an approximate membership of 232 members have voluntarily petitioned this Court stating that BAILEY'S claims and contentions are not representative of their and that they do not wish to be represented by ALTON J. BAILEY?

2. Whether, the defendants, LOCAL 1830 and LOCAL 1833, were then, and are presently in violation of Section 703(c)(2) of the Civil Rights Act of 1964, which makes it an unlawful employment practice for a labor "to limit, segregate, or classify its membership or applicants for membership or to classify or fail to

refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or an applicant for employment, because of such individual's race, color, religion, sex, or national origin," by maintaining segregated LOCALS for whites and blacks?

3. Whether, under the case made and provided, the appellees are indebted unto appellant, and the class he represents, in wages and back pay for intentionally engaging in unlawful employment practices charged and alleged in the Complaint, which unlawful employment practices denied and deprived and/or denying appellant and the class he represents of rights accorded them and protected by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981; and whether said appellees should be ordered to pay same with reasonable diligence in accordance with the provisions of 42 U.S.C. § 2000e-5(g)?

The Petitioner by written Brief (App. P, infra, 9p-10p) argued in the Court of Appeals that:

"A suit for violation of Title VII is necessarily a class action as the evil sought to be ended is discriminatory on the basis of a class characteristic, i.e., race, sex, religion or national origin. *Bowie v. Colgate-Palmolive Co.*, 416 F. 2d 711, 2 FEP Cases 121 (1969).

Therefore, the determining factor as to whether the appellant presents a class action is determined, in this case, by the appellant's class characteristic, and not by the number of other persons similarly situated, who are willing to join

with him, BAILEY, in the prosecution of the discriminatory practices and/or customs. The appellant, ALTON J. BAILEY, has alleged and proven that the defendants have instituted and maintained the following practices, customs and usages, which violate Title VII of the Civil Rights Act of 1964, viz:

> a) Employ persons according to their race and color dividing jobs equally between the defendants, LOCAL 1830, comprised entirely of Negro persons and a membership of approximately 200, and LOCAL 1833, comprised entirely of white persons and a membership of approximately 100.
>
> b) White persons have an opportunity twice as great to secure employment with the defendants Stevedoring Companies as do the black persons.
>
> c) The defendants, LOCAL 1830 and LOCAL 1833, are in violation of Title VII of the Civil Rights Act of 1964 insofar as they are parties to "Collective Bargaining Agreements" with the defendants Stevedoring Companies which recognize racially segregated labor organizations and job assignments.

All these claims presented by appellant, ALTON J. BAILEY, are based upon a characteristic common to a class, or a particular class of people, i.e., the black race."

After oral arguments by counsel for the parties and careful deliberation by the Court of Appeals, Fifth Circuit,

the Court, on March 11, 1976, issued its Opinion (App. C, infra, 1c-16c) concluding, inter alia, that the defendants:

1. maintained segregated unions;

2. the maintaining of racially segregated union was a violation of Title VII of the Civil Rights Act of 1964; and that,

> "the district court erred when it refused to grant appellant's motion for permanent injunction against the continued operation of segregated locals. The 50%-50% hiring practice represents a threat of employment discrimination and thus violates 42 U.S.C. § 2000e-2(c)(2), which makes an employment practice unlawful if it "would deprive or tend to deprive an individual of employment opportunities."

The Petitioner **prevailed**; and the Respondents applied to the Supreme Court of the United States for Writ of Certiorari, which was **denied** (App. Q, infra, 1q), *Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL–CIO v. Bailey* (1977) 429 U.S. 1052, 97 S. Ct. 767, 50 L. Ed. 2d 769.

The Court of Appeals enjoined the Respondents' 50%-50% hiring practices under the "Collective Bargaining Agreements"; and ordered that the segregated Local Unions be merged.

Upon remand to the Trial Court for implementation of the Order of the Court of Appeals, the Respondents invoked Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure to set aside the mandate of the Court of Appeals of January 19, 1977, asserting that the order and mandate of the Court of Appeals prohibiting the Respondents' 50%-50% hiring practices and requiring that the

segregated Locals unions be merged were contrary to *East Texas Motor Freight System, Inc. v. Rodriguez* (1977) 431 U.S. 395, 97 S. Ct. 1891, 52 L. Ed. 2d 453, an intervening decision of the Supreme Court of the United States. [Cf. App. R, infra, 1r-3r.]

After hearing arguments on Respondents' Motion for Relief From Judgment under Rule 60(b)(5) and (6), the District Court concluded that it was compelled to deviate from the order and mandate of the Court of Appeals; and did not only dismiss Petitioner's Title VII action, but refused to enforce the mandate of the Court of Appeals which was reissued on January 19, 1977. Again Petitioner appealed to the Court of Appeals, Fifth Circuit; and again Petitioner prevailed. The Respondents again applied to the Supreme Court of the United States for Writ of Certiorari, which was denied (App. S, infra, 1s), *Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL–CIO v. Bailey* (1981) 450 U.S. 964, 101 S. Ct. 1479, 67 L. Ed. 2d 613.

On November 19, 1982, the Respondents finally implemented the mandate issued by the Court of Appeals on March 11, 1976. The District Court approved the implementation.

On June 14, 1983, Petitioner filed Motion for Attorney's Fees, Costs and Expenses together with notice thereof (App. T, infra, 1t-6t), accompanying Affidavit of Attorney in Support of "Motion for Attorney's Fees" (App. U, infra, 1u-22u), and Memorandum of Authority in Support of Motion for Attorney's Fees (App. V, infra, 1v-2v).

On July 17, 1984, a Second Pretrial Order was filed relative to the Motion for Attorney's Fees, as was re-

quired by the District Court, and in connection therewith Petitioner listed as witnesses:

> 1. Richard C. Cadwallader, Esq., who furnished his Affidavit (App. W, infra, 1w-3w) in support of Petitioner's Motion for Attorney's Fees.
>
> 2. Arthur Cobb, Esq., who furnished his Affidavit (App. X, infra, 1x-2x) in support of Petitioner's Motion for Attorney's Fees.
>
> 3. Joseph A. Gladney, Esq., who furnished his Affidavit (App. Y, infra, 1y-3y) in support of Petitioner's Motion for Attorney's Fees.
>
> 4. William F. Wessel, Esq., who furnished his Affidavit (App. Z, infra, 1z-3z) in support of Petitioner's Motion for Attorney's Fees.
>
> 5. Joseph F. Keogh, Esq., who furnished his Affidavit (App. AA, infra, 1aa-3aa) in support of Petitioner's Motion for Attorney's Fees.

The District Court never had a hearing on Petitioner's motion for Attorney's Fees, or a trial on the issue of attorney's fees. Notwithstanding, Petitioner on October 21, 1983, filed Motion for an Early and Expedited Trial (App. BB, infra, 1bb-5bb).

On July 8, 1986, the District Court denied Petitioner's Motion for Attorney's Fees, Costs and Expenses; and held that "Plaintiff lost his case." [Cf. App. I, infra, 5i.]

On December 17, 1986, the Court of Appeals affirmed the denial of Petitioner's Motion for Attorney's Fees, Costs and Expenses (App. A, infra, 1a-5a) by the District Court; and on January 12, 1987, the Court of Appeals

refused to grant a rehearing (App. B, infra, 1b-2b). Thus, this application for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

Generally, it has been held that a successful plaintiff is entitled to an award of attorney's fees as the prevailing party in a Title VII claim unless such an award would be unjust. *Brown v. Culpepper* (CA5 Ga. 1977) 559 F. 2d 274, reh dn (CA5) 561 F. 2d 1177; *Core v. Turner* (CA5 Miss. 1977) 563 F. 2d 159; *Henderson v. Ft. Worth Independent School District* (CA5 Tex. 1978) 574 F. 2d 1210, on reh (CA5 Tex.) 579 F. 2d 376, and on reh (CA5 Tex.) 584 F. 2d 115.

The petitioner, ALTON J. BAILEY, is unequivocally the "prevailing party" in this action, within the contemplation of the attorney's fees provisions of the Civil Rights Act of 1964, Title VII, § 706(k), 42 U.S.C. § 2000e-5(k).

Petitioner, ALTON J. BAILEY, through this action, obtained judicial merger of the two racially segregated local unions; and an injunction against the Respondents, enjoining them from hiring and allotting jobs on a 50%-50% basis to the segregated local unions under the "Collective Bargaining Agreements by and between the Respondents, which permitted the Respondents to engage and participate in proscribed race-based discriminatory employment practices, policies, customs and usages against the Petitioner, and others similarly situated, in violation of the Civil Rights Act of 1964, Title VII, § 703(a)(1 and 2) and (c)(1, 2 and 3), 42 U.S.C. § 2000e-2(a)(1 and 2) and (c)(1, 2 and 3).

Under the Supreme Court's decision of *Hensley v. Eckerhart* (1983) 461 U.S. 424, 103 S. Ct. 1933, 76 L. Ed. 2d 40, 461 U.S. 952, 103 S. Ct. 2421, 77 L. Ed. 2d 1310, to be the "Prevailing Party," Petitioner was not required to prove every single issue presented before being entitled to recover an award of reasonable attorney's fees pursuant to 42 U.S.C. §§ 1988 and 2000e-5(k).

> All claims made by plaintiffs were based on a common core of facts. The claims on which plaintiffs did not prevail were closely related to the claims on which they did prevail. The time devoted to claims on which plaintiffs did not prevail cannot reasonably be separated from time devoted to claims on which plaintiffs did prevail. *City of Riverside v. Rivera* (decided June 27, 1986) U.S., 103 S. Ct. 2686, at 2693, citing *Hensley*, 461 U.S., at 435, 103 S. Ct., at 1940.

The racially segregated local unions were judicially required to merge, which effectively enjoined the Respondents from entering into and participating in "Collective Bargaining Agreements" allowing the Respondents to discriminate in employment practices, policies, customs and usages by handing out work on a 50%-50% basis to racially segregated local unions where two-thirds of the work force was in the black local union and the remaining one-third of the work force was in the white local union, enabling the members of the white local union to work twice as much as the members of the black local union.

The work done by the Attorney prosecuting this action on behalf of the petitioner, ALTON J. BAILEY, assisted the class within the contemplation of the "*common core of facts test*" announced by *Hensley*, supra, which distinguishes this case of the Petitioner's from the ma-

jority opinion in the case of *Commonwealth Oil Refining Co., Inc. v. E.E.O.C.* (CA5 1983) 720 F. 2d 1383 (in which the late Judge Tate vehemently dissented), on which the Court of Appeals based its opinion in affirming the denial of an award of attorney's fees to petitioner, ALTON J. BAILEY, as the "prevailing party" in this case, contrarily to the Civil Rights Act of 1964, Title VII, § 706(k), 42 U.S.C. § 2000e-5(k).

The petitioner, ALTON J. BAILEY, clearly won this case; and obtained excellent results in the nature of injunctive relief.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Attorneys for Petitioner:
JONES & JONES

DATED: April 2, 1987

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CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff, Alton J. Bailey, does hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari and the accompanying Appendixes are being forwarded to the opposing counsel of record by regular United States Mail, first-class postage prepaid, addressed to:

Mr. Jerry L. Gardner, Jr.
Gardner, Robein & Healey
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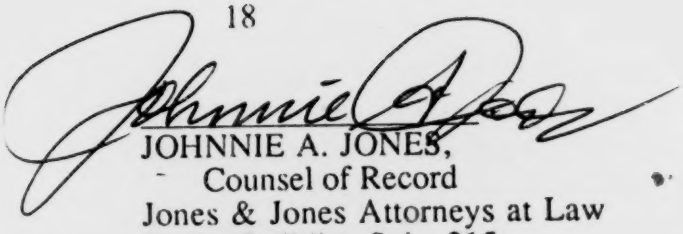
Baton Rouge, Louisiana, this 2nd day of April, 1987.



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NUMBER:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

ALTON J. BAILEY, Petitioner

versus

RYAN STEVEDORING COMPANY, INC., ET AL., Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

APPENDIXES

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APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 86–3604
Summary Calendar

ALTON J. BAILEY,

Plaintiff-Appellant,

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., AND (6) LOCAL 1830 AND LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,

Defendants–Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana
(D.C. No. CA-71-079-B)

(December 17, 1986)

Before RANDALL, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

We are asked to decide whether a claimant in a civil rights suit was the prevailing party and thus entitled to attorney's fees under section 706(K) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k). Persuaded that he is not a prevailing party, we affirm.

I

On March 11, 1971, Alton J. Bailey filed a civil rights action against several stevedoring companies and two local longshoremen's unions at the Port of Baton Rouge. Bailey sued both individually and as a representative for a class of "others similarly situated" claiming racial discrimination. After a bench trial, the district court denied Bailey's attempt to represent a class, concluded that the defendants had not illegally discriminated against Bailey, and dismissed the suit.

On appeal, a panel of this court held that the district court did not err in denying Bailey's "attempt to make a class action out of a grievance which is clearly individual in nature." *Bailey v. Ryan Stevedoring Co.*, 528 F.2d 551, 554 (5th Cir. 1976), *cert. denied.*, 429 U.S. 1052 (1977). In addition, the panel affirmed the district court's conclu-

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

sion that Bailey had not been the victim of any discriminatory practices, customs or policies. Finally, the panel affirmed the district court's finding that Bailey failed to prove the defendant's hiring system actually deprived blacks of employment opportunities. *Id.* at 555 & n.8. But because the hiring system posed a threat of future discrimination, the panel remanded the case for the district court to issue a permanent injunction prohibiting the continued operation of the two segregated local unions. *Id.* at 557.

The district court on remand refused to order the merger of the two unions, concluding that merger would be inconsistent with the Supreme Court's decision in *East Texas Motor Freight System, Inc., v. Rodriguez*, 431 U.S. 395 (1977), rendered after the panel's ruling. *Bailey v. Ryan Stevedoring Co.*, 443 F. Supp. 899 (M.D. La. 1978). This court reversed the district court and reiterated the mandate requiring the merger. *Bailey v. Ryan Stevedoring Co.*, 613 F.2d 588 (5th Cir. 1980).

After the merger of the unions, Bailey filed a motion seeking over $300,000.00 in attorney's fees. The district court denied Bailey's motion, noting:

> All of the courts which considered this case found there was no discrimination against [Bailey] by any of the parties... It can hardly be said [Bailey] was a prevailing party in this issue when it is absolutely clear from every opinion written in the case that [Bailey] failed to prove his case.

II

Bailey contends that the district court erred in denying his motion for attorney's fees under section 706(k) of the Civil Rights Act of 1964. This provision states: "In

any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs..." 42 U.S.C. 2000e-5(k).

To determine prevailing-party status in this circuit, "[t]he proper focus is whether the plaintiff has been successful on *the central issue* ... as exhibited by the fact that he has acquired *the primary relief sought.*" *Commonwealth Oil Refining Co. v. EEOC*, 720 F.2d 1383, 1385 (5th Cir. 1983) (quoting *Iranian Students Ass'n v. Edwards*, 604 F.2d 352, 353 (5th Cir. 1979)) (emphasis in original). The court in *Commonwealth Oil* explained:

> While it may not easily lend itself to further articulation, this single test provides a common-sense, practical yardstick of success. In many if not most lawsuits, whether tried or settled, it is possible to compare the allegations made with the results obtained and pick out a winner: a plaintiff who carried the day on his major claim, a defendant who defeated the major thrust of the suit. In other cases it may be that neither party could fairly be said to have carried the day, and in such event there should be no fee award to either.

Id. at 1385-86 (footnote omitted).

Applying the *Commonwealth Oil* standard to the present case, Bailey did not "carry the day on his major claim." Bailey's major claim was that the defendants engaged in various discriminatory employment practices. Bailey lost on his claim that he had been the victim of discrimination; he lost on his claim that blacks had been deprived of equal employment opportunities because of the maintenance of separate local unions; and he lost in his attempt to bring a class action.

Bailey argues, nonetheless, that because his request for a permanent injunction against separate local unions was granted, he was the prevailing party. But Bailey's argument fails to note the difference between this circuit's and other circuits' test for prevailing-party status. In *Hennigan v. Ouachita Parish School Bd.*, 749 F.2d 1148 (5th Cir. 1985), Judge Rubin explained that prevailing-party status "is determined in this circuit by applying the central issue test. In other circuits ... the plaintiff need "succeed [only] on any significant issue in the litigation which achieves some of the benefit [he] sought in bringing suit.'" *Id.* at 1152 (footnote omitted). While Bailey may have prevailed on a significant issue when the court ordered the merger of the two unions, he did not prevail on his central claim that the defendants engaged in discriminatory employment practices. Indeed, the Fifth Circuit panel ordered the merger of the two unions only because the defendants' hiring practice "represent[ed] a threat of employment discrimination," *Bailey*, 528 F.2d at 557, not because of any evidence of employment discrimination.

In sum, we are persuaded that Bailey was not a prevailing party under § 706(k) of the Civil Rights Act of 1964.

AFFIRMED.

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-3604

ALTON J. BAILEY,

Plaintiff-Appellant,

versus

RYAN STEVEDORING COMPANY, INC.,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana

On Suggestion for Rehearing En Banc
(Opinion December 17, 5 Cir., 1986, ____f.2d__)
(JANUARY 12, 1987)

Before RANDALL, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/_____
United States Circuit Judge

APPENDIX "C"

Alton J. BAILEY, Plaintiff-Appellant,

v.

RYAN STEVEDORING COMPANY INC., et al., Defendants-Appellees.

No. 74-2544

United States Court of Appeals,
Fifth Circuit

March 11, 1976.
Rehearing and Rehearing En Banc
Denied June 17, 1976.
See 533 F.2d 976.

Civil rights action was brought by member of segregated longshore union local, on behalf of himself and other persons similarly situated, against five stevedoring companies and two union locals alleging various discriminatory employment practices. The United States District Court for the Middle District of Louisiana, E. Gordon West, J., dismissed action, and plaintiff appealed. The Court of Appeals, Ingraham, Circuit Judge, held that where views of majority of black longshoremen were antagonistic of those of plaintiff, trial court did not abuse its discretion in denying class action and proceeding to dispose of plaintiff's individual claim that he was victimized

by isolated acts and general practices of discrimination, but that fifty percent-fifty percent rule whereby, as far as practable, each longshore gang was composed of equal number of black and white longshoremen represented threat of employment discrimination because of fluctuation of membership of segregated union locals and thus motion for permanent injunction against continued operation of segregated locals should have been granted.

Reversed and remanded.

1. Federal Civil Procedure (184)

In civil rights action brought by plaintiff, a member of segregated union local, on behalf of himself and other persons similarly situated, against five stevedoring companies and two longshore union locals alleging various discriminatory employment practices, trial court did not abuse its discretion in denying class action and proceeding to dispose of plaintiff's individual claim that he was victimized by isolated acts and general practices of discrimination where views of majority of black longshoremen were antagonistic to those of plaintiff, the would-be standard-bearer for proposed class. Fed. Rules Civ. Proc. rule 23, 28 U.S.C.A.

2. Civil Rights (46)

Where plaintiff, a member of segregated longshore union local, did not prove that 50%-50% hiring practice rule whereby longshore gangs were composed of, as far as practicable, equal number of black and white longshoremen actually deprived blacks of employment opportunities but merely established that system would tend to result in discriminatory effect when there was membership imbalance between segregated locals,

plaintiff was not entitled to recover back pay. Civil Rights Act of 1964, § 703(c)(2), 42 U.S.C.A. § 2000e-2(c)(2).

3. Civil Rights (9.10)

Where work was assigned when plaintiff, a member of segregated union local, made himself available, plaintiff worked fewer hours than average longshoreman because he voluntarily elected not to work by absenting himself from daily shape-ups at which longshoremen were hired, and plaintiff never applied for admission to available training programs necessary to qualify for placement in skilled longshoremen positions, plaintiff's average of fewer work hours per year than average longshoreman and employment decisions to exclude plaintiff from positions of responsibility and special skill were not product of discrimination against plaintiff by stevedoring companies nor union locals.

4. Civil Rights (9.10, 46)

Fifty percent-fifty percent hiring practice rule whereby, as far as practicable, longshore gangs were composed of equal number of black and white longshoremen from racially segregated union locals represented threat of employment discrimination in violation of Civil Rights Act of 1964 provision making employment practice unlawful if it "would deprive or tend to deprive" an individual of employment opportunities and thus motion for permanent injunction against continued operation of segregated locals should have been granted. Civil Rights Act of 1964, § 703(c)(2), 42 U.S.C.A. § 2000e-2(c)(2).

Johnnie A. Jones, Baton Rouge, La., for plaintiff-appellant.

George Mathews, Baton Rouge, La., for Ryan Steve. Co., Inc., and Baton Rouge Marine Contractors.

Joseph W. Cole, Jr., Port Allen, La., for Local 1830 of Gen. Longshore Workers, etc.

Robert L. Kleinpeter, Baton Rouge, La., for Rogers Terminal & Shipping Corp., La. Steve., Inc., Ramsay Scarlett Co., Inc., and Baton Roue Marine Contractors, Inc.

James A George, Baton Rouge, La., for Local 1833 Gen. Longshore Workers, etc.

C. Paul Barker, New Orleans, La., for Locals 1830 and 1833.

Appeal from the United States District Court for the Middle District of Louisiana.

Before COLEMAN and INGRAHAM, Circuit Judges, and O'KELLEY, District Judge.

INGRAHAM, Circuit Judge.

Appellant Alton J. Bailey, a member of Local 1830, filed a civil rights action against five stevedoring companies and two longshore locals charging them with various discriminatory employment practices at the Port of Baton Rouge.[1] In this action in behalf of himself and "other per-

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[1]Appellant's action is based on Title VII of the 1964 Civil Rights Act. Section 703(c) provides:

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer

sons similarly situated," appellant sought injunctive relief, declaratory judgment and back pay. The trial court rejected appellant's claims and dismissed his action.

The following issues are presented on appeal: (1) Is appellant entitled to bring a class action in behalf of two hundred and thirty-two members of Local 1830 when two hundred and four members voluntarily state that appellant's claims are unrepresentative of the Local? (2) is the trial court's finding that appellees were not engaged in discriminatory practices, policies or customs clearly erroneous? (3) Are segregated labor organizations, Locals 1830 and 1833, a violation of the Civil Rights Act?

CLASS ACTION

[1] Instituting this civil rights action under 42 U.S.C. § 2000e-2(c), appellant attempts to advance the interests of himself and "other persons similarly situated." Specifically, the intended class includes "Negro persons who are employed, or might be employed by [the five stevedoring companies named in the petition] ... or who are members or might be members of LOCALS 1830 and 1833 ...." Appellees, however, submitted a voluntary petition to refute appellant's claim of fair representation.

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for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

42 U.S.C. § 2000e-2(c).

204 of the approximately 230 members of Local 1830 stated in pertinent part:

> "We understand Boudreaux, Wells and Bailey claim to represent all black persons employed as longshoremen on the Port Allen docks since 1965 and all black persons who are members of Local 1830.
>
> "We understand they are seeking to join our black Local 1830 and the white Local together.
>
> "We state Boudreaux, Wells and Bailey do not represent us as a class in their effort to integrate the unions. If the unions are integrated, we will lose (1) our right to equal jobs with the whites, (2) our right to elect our own officers and grievance committees, and (3) our rights to our own meetings and a chance to hold office and act for the black longshoremen to protect their interest.
>
> "By maintaining our separate strength and not having it diluted by joining with the white Local we have been able to obtain the same wages, the same number of jobs and equal working conditions, including foremen and other jobs in the Port. If our Locals are put together a few dissatisfied black men can join with the white men and deprive the vast majority of black workers of their jobs and working conditions.
>
> "We do not want these three men, Boudreaux, Wells and Bailey to act for us as a class in this suit and we do not want ~~our~~ Local Union destroyed. We understand that if any of us want to we have the right to join the white union or stay a member of the black union now."

It appears, therefore, that the views of a majority of the black longshoremen are antagonistic with those of the appellant, the would-be standard bearer for the proposed class.

The trial court concluded that "[t]he facts of this case clearly establish that the claims of [appellant] are individual in nature and the issues raised by him are not issues common to any definable class too numerous to sue individually...." and denied the class action under Rule 23, F.R.Civ.P. The suit was viewed, instead, as an individual action by appellant "for no one's benefit but his own."

In *Phillips v. Klassen*, 163 U.S.App. D.C. 360, 502 F.2d 362 at 365-66 (1974), cert. den. 419 U.S. 996, 95 S.Ct. 309, 42 L.Ed.2d 269 (1975), the court stated:

> "It is axiomatic that in order for a class action to be maintainable the representative party must adequately protect the interests of those he purports to represent. The concept is as old as the historic remedy of a class suit and as contemporary as the requirement of Rule 23(a)(4) of the Federal Rules of Civil Procedure that "the representative parties will fairly and adequately protect the interests of the class." ... Where courts discern that the interests of the name plaintiff are in significant part antagonistic to those of the class he purports to represent, they decline to entertain the action as a class action."

See Wright and Miller, 7 Federal Practice and Procedure § 1768 (1972).

In the instant case we conclude that the trial court did not abuse its discretion in denying the class action. *Cf. Jones v. Diamond*, 519 F.2d 1090, 1097-1101 (5th Cir. 1975). The trial court properly proceeded to dispose of

appellant's individual claim that he was victimized by isolated acts and general practices of discrimination. *See Air Line Stewards and Stewardesses Ass'n v. American Airlines, Inc.*, 490 F.2d 636, 640-42 (7th Cir. 1973), *cert. denied* 416 U.S. 993, 94 S.Ct. 2406, 40 L.Ed.2d 773 (1974). We perceive no reversible error pertaining to the district court's ruling on appellant's attempt to make a class action out of a grievance which is clearly individual in nature.

EMPLOYMENT DISCRIMINATION

1. *Local Longshore Practices.* Locals 1830 and 1833,[2] organized in 1955, signed their first contract with the Baton Rouge Steamship Association[3] in 1956.

Longshoremen are hired at Port Allen, Louisiana, at "shape-ups"[4] conducted twice daily (7:00 A.M. and 5:00

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[2]Local 1830, the senior longshoremen's labor organization, is composed exclusively of black members. Local 1833 is composed entirely of whites. The two racially segregated locals service the same geographic area (Port of Baton Rouge) pursuant to a single contract with Baton Rouge Steamship Association, and the locals operate a single hiring area.

[3]The Baton Rouge Steamship Association is an association of six stevedoring companies that operate in the Port of Baton Rouge: (1) Baltimore Stevedoring Company; (2) Baton Rouge Marine Contractors; (3) Capitol City Stevedoring Co., Inc.; (4) Louisiana Stevedores, Inc.; (5) Rogers Terminal & Shipping Corp.; and (6) Ryan Stevedoring Co. (ceased local operations in May 1969).

The association negotiates a single contract with the two locals, both of which are represented during collective bargaining.

[4]A "shape-up" is the hiring procedure at the Port of Baton Rouge. Longshoremen assemble in a single hiring area twice

P.M.) at a single hiring area. They are hired in racially integrated gangs composed of three to sixteen men, depending on the nature of work to be performed.[5] As far as practicable, each gang is composed of an equal number of black and white longshoremen[6] and may work under either a black or white pusher/foreman.

The association maintains employment records that indicate whether the union member was present at the

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each day, and the foreman selects the necessary number of men to compose his gang.

[5]A contract between the Locals and the stevedoring association governs the size of a longshore gang:

(1) general cargo, not less than 16 men;

(2) utilized cargo for vans, not less than 14 men;

(3) steel products, not less than 14 men;

(4) heavy lifts and package steel, not less than 12 men;

(5) scrap iron, not less than 3 men;

(6) sacks or bags exceeding 105 pounds, not less than 6 men per side, in addition to a 16 man gang;

(7) loading grain or meal, not less than 10 men;

(8) loading soft-trimming grain ships, not less than 5 men per spout; and

(9) hand trimming, not less than 5 men.

[6]According to the "50%-50% rule," a gang working with general cargo would be composed of 8 members from Local 1830 and 8 members from Local 1833. On its face this system appears quite equitable; however, because of continuous fluctuation in the membership of Locals 1830 and 1833, a real threat of discriminatory treatment exists. *See United States v. International Longshoremen's Ass'n*, 334 F.Supp. 976, 978-79 (S.D.Tex.1971) (Garza, J.) A local with twice the membership would employ proportionally fewer of its members than the smaller local. Although the *reality* of discriminatory treatment was not proven in this case, the *threat* or *potential* is obvious and is violative of 42 U.S.C. § 2000e-2(c)(2).

shape-up and whether the member was hired. Preference is conferred on union members within the Local that were present but not hired at previous shape-ups. This priority system is unlike seniority systems that characterize other hiring procedures.[7]

The jobs performed by members of each gang can be categorized according to prestige and difficulty: the most prestigious include foreman, pusher and operator; the less strenuous being flagman, checker and waterboy. The same hourly wage is paid for all categories of work.

[2] The district court found no credible evidence to support appellant's contention that appellees discriminated against blacks in either the volume or the nature of work assigned to longshoremen at the Port of Baton Rouge. Since 1955 there have been eighty-four members of Local 1830 assigned to the foreman and pusher positions. Currently there are more blacks than whites assigned to these preferred positions. Furthermore, since 1956 black members of Local 1830 have been assigned 54% of the longshoremen's work at the Port of Baton Rouge, and since the inception of Locals 1830 and 1833 more blacks than whites have been assigned over 700 hours of work per year.[8]

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[7]A seniority system tends to lock in the effect of past discrimination. *See Stevenson v. International Paper Co.*, 516 F.2d 103, 111-15 (5th Cir. 1975). Port of Baton Rouge priority system is fair only to the extent that the 50%-50% hiring practice will allow; whenever membership imbalance occurs, inequitable treatment is inevitable.

[8]700 hours per year is the standard to determine distribution of benefits. After a union member works 700 hours during a contract year, he is entitled to vacation and holiday pay, as well as welfare benefits. Appellant did not prove that the 50%-50% rule *actually* deprived blacks of employment

[3] 2. *Appellant's Employment History.* Appellant, a member of Local 1830 since 1959, claims that he has been victimized by a systematic exclusion from the most desirable longshore positions and a restriction on the amount of work assigned. As a result he claims severe financial loss.

The trial court, however, found that although it is undisputed that appellant has averaged fewer work hours per year than other longshoremen, the evidence does not support a contention of employment discrimination. An analysis of appellant's employment record supports the trial court's conclusion:[9]

Also relating to appellant's availability for job assignment, president of Local 1830, Mark Young, testified that "Bailey was more or less motivated by politics. If he had something pending in the court, and he felt a decision was going to be made, or he got some communication or

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opportunities. He merely established that the system would *tend* to result in a discriminatory effect. In this situation he is not entitled to recover back pay.

[9]This chart is based on the testimony of Russell Dibenedetto, an employee of the Baton Rouge Steamship Association, who compiles employment records on each longshoreman.

Interval: / Employment Status	May 7, 1972 - April 29, 1973 [52 weeks]	Apr. 30, 1973 - Sept. 30, 1973 [22 weeks]	Oct. 1, 1973 - March 31, 1974 [26 weeks]	Total: May 7, 1972 - March 31, 1974 [100 weeks]
Hired	130	61	48	247
Available, But Not Hired	19	0	35	54
Refused Assignment	3	1	1	5
Absent From Shape-up	118	56	52	226

felt like an election was about to come round, he came around. But right after the election or after he lost a case, Bailey was out of sight for as much as a month or a year .... Bailey showed up less than the average longshoreman." It is apparent that neither the stevedoring companies nor the union locals discriminated against appellant; rather, it is clear that work was assigned when appellant made himself available. Appellant worked fewer hours than the average longshoreman because he voluntarily elected not to work by absenting himself from the daily shape-ups.

Similarly, the employment decision to exclude appellant from positions of responsibility and special skill (e.g., foreman, pusher and operator) was rationally based. Appellant never applied for admission to the available training programs necessary to qualify for placement in the skilled positions such as crane operator, winch operator and dozer operator. Furthermore, high absenteeism and erratic, antagonistic behavior contributed to the job placement chosen by the stevedoring companies.[10]

CONCLUSION

[4] As noted above, the district court rejected allegations of discriminatory practices, customs and policies. Nevertheless, we conclude that the trial court's conclu-

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[10]The trial court specifically recounts from the evidence an incident in its findings of fact:

"In 1973 the plaintiff had a dispute over not being retained as a flagman on the day following a four hour shift that he worked as such. Instead of filing a grievance or following established procedures, the plaintiff, as a result of this dispute, proceeded to sit on the cargo, causing an illegal work stoppage without the consent or approval of his union. This resulted in his being arrested and charged with trespassing."

sion was clearly erroneous, for "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States. v. United States Gypsum Co.*, 333 U.S. 364 at 365, 68 S.Ct. 525 at 527, 92 L.Ed. 746 (1948); *see United States v. Singer Mfg. Co.*, 374 U.S. 174 at 194-95, n. 9, 83 S.Ct. 1773, 10 L.Ed. 2d 823 (1963). Section 703(c)(2) of the 1964 Civil Rights Act states: "It shall be an unlawful employment practice for a labor organization ... to limit, segregate, or classify its membership or applicants for membership ... *in any way which would deprive or tend to deprive any individual of employment opportunities* ... because of such individual's race, color, religion, sex, or national origin ...." 42 U.S.C. § 2000e-2(c)(2). This court has construed the Act on several occasions and has required a showing of a "discriminatory effect." *United States v. Jacksonville Terminal Co.*, 451 F.2d 418 (5th Cir. 1971); *Equal Employment Opportunity Commission v. International Longshoremen's Ass'n*, 511 F.2d 273 (5th Cir. 1975); *Local No. 293 v. Local No. 293-A*, 526 F.2d 316 (5th Cir. 1976) [No. 74-3861, 1976].

In *United States v. Jacksonville Terminal Co.*, supra, this court ordered amalgamation of racially segregated locals because "[t]he record clearly disclose[d] that the existence of 'separate but equal' locals has had, and may continue to have, post-Act deleterious effects on blacks." 451 F.2d at 457. The specific discriminatory effect noted by the court was the non-existence of black influence in regional and national union affairs:

> "The BMWE [Brotherhood of Maintenance of Way Employees] Seaboard Federation represents all employees in collective bargaining with the Terminal. Terminal delegates to the Federa-

> tion convention, where union policy presumably is debated and determined, have always come form the all-white local but have cast one vote for each member of both locals. These delegates have been elected exclusively by members of the white local. Thus we must conclude, and the Union has not disproved, that black BMWE members at the Terminal have had no voice in their bargaining agent's councils. Here, at least, black influence in Federation affairs remains nonexistent."

451 F.2d at 457. Racially segregated locals, therefore, were violative of the 1964 Civil Rights Act, Title VII. *Equla Emp. Op. Com'n v. International Long. Ass'n, supra,* cited the *Jacksonville Terminal Co.* opinion and ordered consolidation of two racially segregated locals. As in the instant case, the longshoremen of the segregated locals were hired according to the 50%-50% rule—a practice which has discriminatory potential. Judge Goldberg stated:

> "I conclude that the unions cannot [show that the organizational structure would not *tend* to deprive any *individual* of employment *opportunities* or affect his status as an employee] even granting that present longshoremen, whether black or white, are paid the same wages, have equal numbers of representatives on the contract negotiating committee, and, under a common seniority and hiring hall system, could be assured of an equal chance of obtaining longshore work. There are two reasons for this decision. First, black individuals who might potentially seek employment opportunities as longshoremen would tend to be dissuaded by the onus they would then have to bear of working through an involuntarily all-black organization. Second, there is a significant likelihood that the contracts which would emerge from

> bargaining sessions in which all of labor's representatives were charged with serving all of the employees would better the employment status of present and potential black employees than does a bargaining committee in which half of the representatives are charged with serving white employees and the other half with serving black employees.'

511 F.2d at 277. Judges Thornberry and Godbold specially concurred:

> "[T]he merits of this case can be decided without holding that segregated locals constitute a per se violation of Title VII. As Judge Goldberg notes ... the lower court here specifically found that "the Government has discharged ... [its] burden ... [of showing] that the maintenance of segregated locals constitutes a pattern or practice depriving individuals of working opportunities, because of their race or national origin.' 334 F.Supp. at 980. ... We read this language to make merger of segregated locals mandatory *whenever they are shown to have had actual discriminatory effect on employment opportunities*. Since in this case Judge Garza found that employment discrimination resulted from the existence of segregated locals, *Jacksonville Terminal* left him no discretion to refuse merger."

511 F.2d at 280. (emphasis added.)

Local 293 v. Local 293-A, supra, likewise expressly recognizes the necessity to demonstrate an actual discriminatory effect. 526 F.2d 316 at 319, n. 4.

In this case, as in *Equal Emp. Op. Com'n v. International Long. Ass'n, supra*, the longshoremen were hired according to the 50%-50% rule. Because of the inevitable fluctuation in union membership, there is a real possibility

for discriminatory treatment. Judge Garza recognized the inherent discriminatory potential of the 50%-50% rule:

> "With the exception of the port of Brownsville, generally the longshoremen's work is divided between the White and Negro locals on a fifty-fifty basis. On its face, this would seem to be a fair shake for the races, but this does not tell the whole story. If in any port there are one hundred Whites available to work on the waterfront as longshoremen and two hundred Negroes, and the work is divided fifty-fifty between the locals, it is obvious that the one hundred Whites will work more hours than the Negroes. The fifty-fifty rule would be ideal if there were an equal number of White longshoremen to Negro longshoremen in every port, but this is not the case. The same situation would exist if instead of one hundred White and two hundred Negro longshoremen, there would be two hundred White and one hundred Negro longshoremen in a given port. In that situation, the Black longshoremen would work more hours than the White."

United States v. International Longshoremen's Ass'n, 334 F.Supp. 977 at 978-79 (S.D.Tex.1971).

We conclude that the district court erred when it refused to grant appellant's motion for permanent injunction against the continued operation of segregated locals. The 50%-50% hiring practice represents a threat of employment discrimination and thus violates 42 U.S.C. § 2000e-2(c)(2), which makes an employment practice unlawful if it "would deprive or tend to deprive" an individual of employment opportunities. It is unnecessary to reach the issue of whether segregated locals represent a *per se* violation of the 1964 Civil Rights Act.

Reversed and remanded.

In Bailey's case, 204 out of the total membership of 232 in Local 1830 signed a statement disavowing his putative representative status as a class action plaintiff. In part, these were their words:

> We state Boudreaux, Wells and Bailey do not represent us as a class in their effort to integrate the unions. If the unions are integrated, we will lose (1) our right to equal jobs with the whites, (2) our right to elect our own officers and grievance committees, and (3) our rights to our own meetings and a chance to hold office and act for the black longshoremen to protect their interest.
>
> * * *
>
> We do not want these three men, Boudreaux, Wells and Bailey to act for us as a class in this suit and we do not want our Local Union destroyed. We understand that if any of us want to we have the right to join the white union or stay a member of the black union now.

Accepting this overwhelming rejection, this court affirmed the district judge's refusal to allow the action to proceed as a class action.

The panel also found record support for the district court's finding that Bailey's contention of personal employment discrimination was absolutely meritless. The record established that he worked less than other longshoremen solely because he failed to present himself for work under rational, nondiscriminatory employment rules. We likewise affirmed that his failure to qualify for skilled positions was attributable to his high absenteeism and erratic, antagonistic behavior.

Yet without a class and without an individual plaintiff who had suffered any loss from the asserted discriminatory practices or conditions, this court reversed the district judge's refusal of injunctive relief and mandated him to grant Bailey's motion to force the merger of two independent union locals who do not want to merge.

Assuming the court had a plaintiff before it with standing to present a concrete controversy, the prior precedent of this circuit would require the plaintiff to demonstrate *an actual discriminatory effect* before granting such relief. Here the appellate court concludes that, despite the clear proof it finds cogent to deny the class action and individual claim, it must apply a presumption that segregated local union organizations possess "a real *possibility* for discriminatory treatment" and represent "a *threat* of employment discrimination" and that these future contingencies render the trial court's refusal to enjoin an abuse of discretion. With respect, I submit the panel is wrong, bad wrong.

I can take some comfort from the fact that no other judge joins me in this dissent, because it indicates I am in error in concluding that *Bailey* does not slide across the rule that no proof short of actual discrimination will suffice to destroy First Amendment protections abridged here. *Bailey* purports to follow precedent, so next time the question arises at least we can say it did.

APPENDIX "E"

I
429 U.S. 1052, 50 L.Ed.2d 769

LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, petitioners, v. Alton J. BAILEY. No. 76-389

Facts and opinion, *Bailey v. Ryan Stevedoring Company, Inc.*, 528 F.2d 551; 533 F.2d 976.

Jan. 10, 1977. Motion of respondent for leave to proceed *in forma pauperis* and petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

APPENDIX "F"

Alton J. BAILEY,

Plaintiff-Appellant,

v.

RYAN STEVEDORING COMPANY, INC.; Rogers Terminal and Shipping Corp.; Louisiana Stevedores, Inc.; Ramsay, Scarlett and Company, Inc.; Baton Rouge Marine Contractors, Inc.; and Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO,

Defendants-Appellees.

No. 78-1387

United States Court of Appeals,

Fifth Circuit.

March 14, 1980.

Civil rights action was brought by member of segregate longshore union charging stevedoring companies and locals with discriminatory employment practices. On the remand, 528 F.2d 551, the United States District Court, for the Middle District of Louisiana, E. Gordon West, J., 443 F.Supp. 899, dismissed, and appeal was taken. The Court of Appeals, Sam D. Johnson, Circuit Judge, held

that since members of black local longshore union presently suffered from threat of discriminatory treatment operation of two racially segregated unions in conjunction with stevedoring companies and unions' 50%-50% hiring practice plaintiff had the requisite standing to assert a violation of a statutory right under Title VII of the Civil Rights Act and was entitled to a preliminary injunction merging the two segregated locals into one integrated local.

Reversed and remanded.

1. Civil Rights (41, 46)

Since plaintiff member of black local longshore union presently suffered from threat of discriminatory treatment by operation of two racially segregated unions in conjunction with stevedoring companies and unions' 50%-50% hiring practice requiring each longshore gang to be composed equally of blacks and whites, with a continuous fluctuation in membership of each segregated local, plaintiff had the requisite to assert a violation of a statutory right under Title VII of the Civil Rights Act and was entitled to a preliminary injunction merging the two segregated locals into one integrated local. Civil Rights Act of 1964, §§ 701 et seq., 703(c) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-2(c).

2. Civil Rights (9.12)

Even though Title VII, i.e., employment discrimination provisions of Civil Rights Act, extends a measure of immunity to the routine application of bona fide seniority systems, the prospective effect of Title VII does obligate an employer to fill future vacancies on a nondiscrimina-

tory basis. Civil Rights Act of 1964, § 703(c) as amended 42 U.S.C.A. § 2000e-2(c).

3. Civil Rights (46)

Since members of black local longshore union established that he suffered from a present threat of discriminatory treatment and loss of employment opportunities from continuing operation of discriminatory employment practices, i.e., racially segregated locals and 50%-50% hiring practice, the plaintiff had established a violation of Title VII and since plaintiff had timely filed necessary charges with Equal Employment Opportunity Commission, injunctive relief was appropriate; suit was not one concerning perpetuation of past effects from discriminatory employment practices that actually or legally predated enactment of Title VII, i.e., did not involve a bona fide seniority system. Civil Rights Act of 1964, §§ 703(c)(2), 706(d) as amended 42 U.S.C.A. §§ 2000e-2(c)(2), 2000e-5(e).

Johnnie A. Jones, Adair D. Jones, Baton Rouge, La., for plaintiff-appellant.

Dodd, Barker, Boudreaux, Lamy & Gardner, C. Paul Barker, New Orleans, La., Joseph W. Cole, Jr., Port Allen, La., Louis L. Robein, Jr., New Orleans, La., for Local 1830 & Local 1833, etc.

Glusman, Moore, Lopez & Wilkinson, James C. Lopez, James A. George, Baton Rouge, La., for Rogers Terminal & Shipping Corp., La. Stevedores, Inc., Ramsay, Scarlett and Co., Inc. & Baton Rouge Marine Contractors, Inc.

Lutz Alexander Prager, Atty., James P. Scanlan, Atty., Washington, D.C., Warren Duplinsky, Bethesday, Md., amicus curiae.

Appeal from the United States District Court for the Middle District of Louisiana.

Before GEWIN, RUBIN and SAM D. JOHNSON, Circuit Judges.

SAM D. JOHNSON, Circuit Judge:

Plaintiff Alton J. Bailey has timely appealed from the December 29, 1977 order of the district court that dismissed his civil rights action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c). This is plaintiff's second appeal to our Court in this matter. This Court's first opinion, *Bailey v. Ryan Stevedoring Company*, issued on Bailey's first appeal, appears in 528 F.2d 551 (5th Cir.), rehearing and rehearing en banc denied, 533 F.2d 976 (1976), *cert. denied*, 429 U.S. 1052, 97 S.Ct. 767, 50 L.Ed.2d 769 (1977). That opinion thoroughly details the facts in this case and they will not be repeated here.

In this Court's prior opinion and mandate, the district court was ordered to grant plaintiff Bailey's motion for a permanent injunction against the continued operation of two racially segregated longshore local unions at the Port of Baton Rouge. 528 F.2d at 557. This Court's mandate was initially issued on June 25, 1976. This Court subsequently recalled its mandate to permit the parties to seek review of the decision in the Supreme Court of the United States. Upon the Supreme Court's denial of certiorari, this Court reissued its mandate on January 19, 1977, and

ordered the district court to proceed in accordance with the opinion.

In July, 1977, all the defendants moved the district court pursuant to Rule 60(b)(5) and (6) of the Federal Rules of Civil Procedure to set aside this Court's mandate of January 19, 1977 asserting it was contrary to several intervening decision of the Supreme Court of the United States. Sections 5 and 6 of Rule 60(b) provide that a district court may grant relief from a final order if it would be no longer equitable to give prospective application to the judgment or if any other reason justified relief from the operation of the judgment. The district court entered its order granting the Rule 60(b) motion on December 29, 1977.

In that order, the district court not only dismissed plaintiff's Title VII action, but also refused to enforce this Court's mandate that had been reissued on January 19, 1977. Thus, the district court again denied plaintiff Bailey's request for a permanent injunction merging the two local longshore unions. In a written opinion dated January 27, 1978, the district court explained its dismissal order by stating that the Supreme Court's decision in *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977), compelled it to deviate from this Court's mandate. We disagree with the district court's order and opinion. The district court's order of dismissal of December 29, 1977 will be reversed and it will be ordered to comply with this Court's mandate that was reissued on January 19, 1977.

East Texas Motor Freight System, Inc. v. Rodriguez does not justify the setting aside of our previous mandate. That case and the present case are not factually similar. In *East Texas Motor Freight System, Inc. v. Rodriguez*, the plaintiffs lacked the requisite standing to as-

sert that a "no-transfer" employment practice of their employer violated Title VII because they did not possess the necessary qualifications for the positions to which they had requested transfer. Consequently, they could suffer no injury from any alleged discriminatory employment practice.

[1] Plaintiff Bailey, however, as a member of the black local longshore union, suffers from a threat of employment discrimination in violation of 42 U.S.C. § 2000e-2(c)(2) by the operation of the two racially segregated unions in conjunction with the defendants' 50%-50% hiring practice that required each longshore gang to be composed equally of blacks and whites. In this Court's prior opinion, it was found that the continuous fluctuation in the membership of each segregated local union and the 50%-50% hiring rule represented a real threat of discriminatory treatment. 528 F.2d at 554 n. 6, 557. Since plaintiff Bailey presently suffers from this threat of discriminatory treatment, he has the requisite standing to assert a violation of his statutory rights under Title VII. Thus, *East Texas Motor Freight System, Inc. v. Rodriguez* is inapplicable and plaintiff Bailey was and is entitled to a permanent injunction merging the two segregated local unions into one integrated local union.

[2] This Court's mandate of January 19, 1977 is also not contrary to the Supreme Court's decisions in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977) and *United Air Lines v. Evans*, 431 U.S. 533, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977). Both of those cases concerned the issue whether Title VII was violated by bona fide seniority systems that perpetuated the effects of discriminatory employment practices that actually predated the passage of Title VII or that were legally the

equivalent to pre-enactment practices because the charge of employment discrimination had not been filed with the EEOC within the statutory time limits of Title VII, 42 U.S.C. § 2000e-5(e). Even though Title VII extends a measure of immunity to the routine application of bona fide seniority systems, the prospective effect of Title VII does obligate an employer to fill future vacancies on a non-discriminatory basis. *International Brotherhood of Teamsters v. United States*, 431 U.S. at 350-354, 97 S.Ct. at 1862-1864.

[3] Plaintiff Bailey has shown that he suffers from a present threat of discriminatory treatment and loss of employment opportunities from the continuing operation of discriminatory employment practices. This violates 42 U.S.C. § 2000e-2(c)(2), and the record indicates that plaintiff Bailey timely filed the necessary charges of employment discrimination with the EEOC. Thus, we are not concerned with the perpetuation of past effects from discriminatory employment practices that actually or legally predated the enactment of Title VII, and plaintiff Bailey is entitled to injunctive relief.

The order of the district court of December 29, 1977 is reversed and facated, and on remand, the district court is ordered to proceed in accordance with this Court's mandate of January 19, 1977.

REVERSED AND REMANDED.

APPENDIX "G"

DENIALS OF REHEARING EN BANC 781

UNITED STATES COURT OF APPEALS

Fifth Circuit

DENIALS OF REHEARING EN BANC

(Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12)

Group 1 - - Denials where no member of the panel nor Judge in regular active service on the Court requested that the Court be polled on rehearing en banc.

Group 2 - - Denials after a poll requested by a member of the panel or a Circuit Judge in regular active service.

Group 3 - - Denials on the Court's own motion after a poll requested by a member of the panel or a Circuit Judge in regular active service.

Title	Docket Number	Date of Denial	Citation of Panel Decision
GROUP 1			
Bailey v. Ryan Stevedoring Co., Inc.	78-1387	5/12/80	M.D.La., 613 F.2d 588

APPENDIX "H"

3
450 U.S. 964, 67 L.Ed.2d 613

LOCAL 1830 AND LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, petitioners v. Alton J. BAILEY et al. No. 80-569.

Facts and opinion, *Bailey v. Ryan Stevedoring Company, Inc.*, 613 F.2d 588.

Case below, 618 F.2d 781.

Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

March 2, 1981. Denied.

APPENDIX "I"

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY — CIVIL ACTION

VERSUS — NUMBER 71-79-B

RYAN STEVEDORING COMPANY, INC., ET AL.

* * *

FRANK J. POLOZOLA, District Judge:

This matter is before the court for a determination of whether plaintiff is entitled to attorney's fees as the prevailing party in this action. For reasons to follow, the court finds plaintiff was not the prevailing party herein and, therefore, is not entitled to attorney's fees.

The facts of this case were previously set forth in opinions written by Judge E. Gordon West, 443 F.Supp. 899 (M.D.La. 1978), and the Fifth Circuit Court of Appeals, 613 F.2d 588 (5th Cir. 1980), and will not be repeated in detail here.[1] Alton Bailey filed this suit individ-

---

[1]The reported decisions in this case are:

Bailey v. Ryan Stevedoring Co., Inc., 528 F.2d 551 (5th Cir.), *reh'g denied*, 533 F.2d 976 (5th Cir. 1976) and *cert. denied*, 429 U.S. 1052, 97 S.Ct. 767, 50 L.Ed.2d 769 (1977);

ually and as a class action claiming the defendants discriminated against him and the class he purported to represent because of his race. Judge West dismissed the class action after 204 of the approximate 230 members of the class objected to Bailey representing the class. The Fifth Circuit affirmed the dismissal of the class action stating:

> It appears, therefore, the views of a majority of the black longshoremen are antagonistic with those of appellant, the would-be standard bearer for the proposed class.
>
> * * *
>
> In the instant case we conclude that the trial court did not abuse its discretion in denying the class action.
>
> * * *
>
> We perceive no reversible error pertaining to the district court's ruling on appellant's attempt to make a class action out of a grievance which is clearly individual in nature.
>
> 528 F.2d at 553-554.

Both the district court and the Fifth Circuit Court of Appeals also found there had been no discrimination and dismissed plaintiff's suit.

Bailey v. Ryan Stevedoring Co., Inc., 443 F.Supp. 899 (M.D. La. 1978), *order rev'd*, 613 F.2d 588 (5th Cir.), *reh'g denied*, 618 F.2d 781 (5th Cir. 1980) and *cert. denied*, 450 U.S. 964, 101 S.Ct. 1479, 67 L.Ed.2d 613 (1981).

The Fifth Circuit stated:

> The trial court, however, found that although it undisputed that appellant has averaged fewer work hours per year than other longshoremen, the evidence does not support a contention of employment discrimination. An analysis of appellant's employment record supports the trial court's conclusions:
>
> Also relating to appellant's availability for job assignment, president of Local 1830, Mark Young, testified that "Bailey was more or less motivated by politics. If he had something pending in the court, and he felt a decision was going to be made, or he got some communication or felt like an election was about to come around, he came around. But right after the election or after he lost a case, Bailey was out of sight for as much as a month or a year... Bailey showed up less than the average longshoreman." It is apparent that neither the stevedoring companies nor the union locals discriminated against appellant; rather, it is clear that work was assigned when appellant made himself available. Appellant worked fewer hours than the average longshoremen because he voluntarily elected not to work by absenting himself from the daily shape-ups.
>
> Similarly, the employment decision to exclude appellant from positions of responsibility and special skill (e.g., foreman, pusher and operator) was rationally based. Appellant never applied for admission to the available training programs necessary to qualify for placement in the skilled positions such as crane operator, winch operator and dozer operator. Furthermore, high absenteeism and erratic, antagonistic behavior contributed to

> the job placement chosen by the stevedoring companies. (Footnotes omitted.)
>
> 528 F.2d at 555-556.

However, even though the Fifth Circuit found the record totally void of any evidence of discrimination, the appellate court feared a possible future threat of discrimination if there was not a merger between the white and black longshoremen unions. Thus, the case was remanded to the district court in order for the district court to oversee a merger of the unions. Despite objections made by the plaintiff, Alton Bailey,[2] the leaders of the black and white unions successfully and in a equitable and constitutional manner merged the two unions. The merger has caused few, if any, problems except for the fact that Alton Bailey cannot accept the majority will of the black and white members of the union insofar as elections are concerned and the manner in which the union is to be run.

Named as defendants in the original suit were the unions and several stevedoring companies. This court previously found that the stevedoring companies were not liable for attorney's fees since they had nothing to do with the operation of the unions and had no voice in determining whether there should be a merger of the unions. Furthermore, these companies were not guilty of any discrimination against the plaintiff or the union. Thus, these companies cannot be required to pay attorney's fees to the plaintiff whether plaintiff is a prevailing party or not.

---

[2]Mr. Bailey apparently could not accept the fact that the members of his black union did not want him to be president of the union.

As noted earlier, the court also concludes that plaintiff was not a prevailing party in this suit. Plaintiff lost his case. All of the courts which considered this case found there was no discrimination against the plaintiff by any of the parties. But for the fact that the Fifth Circuit Court of Appeals was concerned about the future possibility of discrimination, this case would not be before the court. It can hardly be said plaintiff was a prevailing party in this issue when it is absolutely clear from every opinion written in the case that plaintiff failed to prove his case. Following remand, the unions, working with the court, merged their unions in an expedient manner, even though they had to overcome numerous problems caused by the plaintiff. It is clear that the plaintiff was not a proper representative of any of the unions or their members. As noted earlier, 204 of the 230 black union members opposed plaintiff acting as their representative. It simply would be a travesty to require these union members and their union to pay Bailey's attorney's fees under the facts of this case. Furthermore, to award attorney's fees in a case where the plaintiff has failed to prove his case and thereafter, did what he could to interfere with the orderly merger of the unions as mandated by the Fifth Circuit would not be in accordance with 42 U.S.C. 1988, the jurisprudence or in the interest of justice. Plaintiff was clearly not the prevailing party in this case. Plaintiff's request for attorney's fees is hereby denied. Judgment shall be entered accordingly.

Baton Rouge, Louisiana, July 8, 1986.

/s/_____
United States District Judge

APPENDIX "J"

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY

VERSUS

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO

CIVIL ACTION

NUMBER 71-79

JUDGMENT

Upon remand from the United States Court of Appeals for the Fifth Circuit, and after due consideration of the law and evident in this case, and after careful consideration of the Fifth Circuit Court of Appeals prior ruling in this case, and the law as enunciated by the United States Supreme Court since the date of that opinion, and for written reasons to be assigned and filed in the record of this case:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants, and against the plaintiff, denying the plaintiff's demand for a mandatory injunction, requiring the defendants, Local Union No. 1830 and Local Union No. 1833, General Longshore Workers, International Longshoremen's Association, AFL–CIO, to merge and cease operations as separate local unions.

IT IS FURTHER ORDERED that the plaintiff pay all costs of these proceedings.

Baton Rouge, Louisiana, December 29, 1977.

/s/_____
United States District Judge

APPENDIX "K"

Alton J. BAILEY

v.

RYAN STEVEDORING CO., INC., (2) Rogers Terminal and Shipping Corp., (3) Louisiana Stevedores, Inc., (4) Ramsay, Scarlett and Co., Inc., (5) Baton Rouge Marine Contractors, Inc., and (6) Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO.

Civ. A. No. 71-79.

United States District Court,
M. D. Louisiana.

Jan. 27, 1978.

On remand from the Court of Appeals, 528 F.2d 551, the District Court, E. Gordon West, J., held that: (1) under rule district court could change judgment of Court of Appeals; (2) district court did not need leave from Court of Appeals to entertain motion for relief, and (3) in light of United States Supreme Court decision subsequent to Court of Appeals' decision, it would be illegal and unjust to compel merger of the two segregated unions under the

circumstances of the civil rights case, so that mandate of Court of Appeals was modified and suit dismissed.

Judgment of dismissal entered.

1. Federal Courts (951)

Federal rule granting power to relieve party of final judgment when it is no longer equitable that judgment have prospective application or for other reason justifying relief gives district court power to change judgment of Court of Appeals on remand for grounds specified in rule. Fed. Rules Civ. Proc. rule 60(b), (b)(5), 28 U.S.C.A.

2. Federal Courts (951)

Federal district court was not required to obtain leave from Court of Appeals to entertain motion, following remand from Court of Appeals, to relieve party of final judgment as ordered by Court of Appeals on ground that it was no longer equitable that such judgment have prospective application or for other reason justifying relief. Fed. Rules Civ. Proc. rule 60(b), (b)(5), 28 U.S.C.A.

3. Federal Courts (925)

Where both district court and Court of Appeals found that plaintiff had no claim individually or as a class representative in civil rights action and plaintiff had suffered no racial discrimination in hands of any of defendants and no member of alleged class had been discriminated against by the defendants, which allocated jobs between members of the two segregated unions on a 50-50 basis, in light of United States Supreme Court decision, subsequent to Court of Appeals decision, district court, on remand, would not compel the merger of the two unions as

ordered by Court of Appeal since plaintiff could not mount a classwide attack.

James C. Lopez, Edward F. Glusman, Baton Rouge, La., for Rogers Terminal & Shipping Corp., Louisiana Stevedores, Inc., Ramsay Scarlett Company, Inc. and Baton Rouge Marine Contractors, Inc.

James A. George, Baton Rouge, La., for Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO.

Joseph W. Cole, Jr., Port Allen, La., for Local 1830, General Longshore Workers, International Longshoremen's Association, AFL-CIO.

Johnnie A. Jones, Baton Rouge, La., for plaintiff.

C. Paul Barker, Dodd, Hirsch, Barker, Meunier, Boudreaux & Lamy, New Orleans, La., for Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO.

George A. Mathews, Dale, Owen, Richardson, Taylor & Mathews, Baton Rouge, La., for Baton Rouge Marine Contractors, Inc. and Ryan Stevedoring Company, Inc.

E. GORDON WEST, District Judge:

The plaintiff, Alton J. Bailey, filed this civil rights action against several stevedoring companies and two local longshoremen's unions at the Port of Baton Rouge, Louisiana. On behalf of himself and "others similarly situated," the plaintiff sought injunctive relief, declaratory judgment, and back pay. The plaintiff further sought to

have the all black union, Local No. 1830, General Longshore Workers, International Longshoremen's Association, AFL-CIO, merged with the all white union, Local No. 1833.

The District Court found that there was no employment discrimination on the part of any of the defendants, and particularly found that plaintiff had in no way been discriminated against by any of the defendants. This Court further concluded that the claims of the plaintiff were entirely individual in nature and denied the plaintiff the class action which he had attempted to bring under Rule 23 of the Federal Rules of Civil Procedure.

On appeal, the Fifth Circuit Court of Appeals affirmed the District Court in part and reversed in part. The Court of Appeals, agreeing with the Trial Court, found the plaintiff did not have a valid individual claim, and that he did not have the requisites to qualify him as a representative for a class action. But then the Appeals Court went on to conclude that while the hiring practice of defendants dividing and allotting jobs on a 50-50 basis between the members of the two unions, which unions each had approximately the same number of members, *did not* result in discriminatory hiring, nevertheless the 50-50 hiring practice represented a *possible future threat* of discrimination should the numerical membership of the two unions change, and then proceeded to remand the case to this Court with a mandate that a permanent injunction issue enjoining the continued operation of the two segregated local unions. In other words, the Court of Appeals agreed that the plaintiff had no meritorious individual claim, and that he could not represent anyone in this suit except himself, but still the mandate required judgment in his favor and against the defendants. Since this Court believes that the law, though it may have been un-

settled at that time, has now been clarified by the United States Supreme Court, it feels compelled to deviate form the mandate issued by the Court of Appeals for the following reasons.

[1] Under Rule 60(b) of the Federal Rules of Civil Procedure, the Court may relieve a party of a final judgment when:

> "(5) ... it is no longer equitable that the judgment should have prospective application; or (6) [for] any other reason justifying relief from the operation of the law."

With this in mind, the following issues are presented to this Court: (1) Does Rule 60(b) give this Court the power to change the judgment of the Appellate Court? (2) Does this Court need leave from the Court of Appeals to entertain the Rule 60(b) motion? (3) If this Court does have such power, do the Supreme Court cases hereinafter referred to warrant deviating from the mandate of the Court of Appeals?

This Court is aware of the trend in the law, as summarized by Professor J. W. Moore in *7 Moore's Federal Practice* ¶ 60.-26(3) at page 325, that generally, Rule 60(b)(5), "does not authorize relief from a judgment on the ground that the law applied by the Court in making its adjudication has been subsequently overruled or declared erroneous in another and unrelated proceeding." But this Court feels that "this is not an inexorable rule, as indeed the Supreme Court has recognized." *Wright and Miller, Federal Practice and Procedure: Civil § 2864.* In *Polites v. U. S.*, 364 U.S. 426, 433, 81 S.Ct. 202, 206, 5 L.Ed.2d 173 (1960), the Court states that:

> "We need not go so far here as to decide when an appeal has been abandoned or not taken because of a clearly applicable adverse rule of law, relief under Rule 60(b) is inflexibly to be withheld when there has later been a clear and authoritative change in governing law."

Following this approach, the First Circuit Court of Appeals in *Theriault v. Smith*, 523 F.2d 601 (CA 1-1975), changed a consent decree when a Supreme Court decision "represented a fundamental change in the legal predicates of the consent decree." The Court recognized this as "arguably the kind of situation in which relief should be available under Rule 60(b)(5)." The District Court in *Griffin v. State Board of Education*, 296 F.Supp. 1178 (E.D.Va.-1969), allowed reopening of a decree upholding the validity of a state tuition grant system where the "intervening and supervening edicts of the Supreme Court qualify under the Rule as a 'reason justifying relief from the operation of the judgment' under Rule 60(b)(6)." The Court went on to say, "This is a substantial change in the law and ended further viability of our decision. Now to continue its efficacy would be unjust to those initially and now affected by the order."

Further justification for the use of Rule 60(b) by this Court is evident in the words of the Court in *Radack v. Norwegian America Line Agency, Inc.*, 318 F.2d 538 (CA 2-1963), wherein it is stated that Rule 60(b) gives the Court a "grand reservoir of equitable power to do justice in a particular case ...; the rule should be liberally construed when substantial justice will be served."

[2] Therefore, it is the opinion of this Court that Rule 60(b) should be used in this case. The question now arises as to whether or not the District Court may apply the rule without leave from the Appellate Court.

Many Courts of Appeals have required appellate leave before the District Court may reopen a case which had been reviewed on appeal. However, the Supreme Court just recently ended this anachronism in *Standard Oil Co. of California v. United States*, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976). The Government won an antitrust action in the District Court and was affirmed by the Supreme Court. There arose allegations of misconduct on the part of Government counsel and the oil company sought to have the judgment set aside. In holding that leave of the Appellate Court was not necessary for the District Court to act, the Court said:

> "In our view, the arguments in favor of requiring appellate leave are unpersuasive. Like the original district court judgment, the appellate mandate relates to the record and issues then before the court, and does not purport to deal with possible later events. Hence the district judge is not flouting the mandate by acting on the motion.' 97 S.Ct. at page 32.

With such authority, this Court feels no hesitation in applying Rule 60(b) on its own, without leave of court. Thus all that remains is to decide whether or not the Supreme Court case law compels deviation from the terms of the mandate.

The defendants in this case have submitted briefs wherein they urge this Court to consider three recent Supreme Court cases, all decided since the appellate hearing on this case. These cases are *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977); *United Air Lines v. Evans*, 431 U.S. 533, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977); and *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 97 S.Ct. 1891, 52 L.Ed.2d 453

(1977). This Court, however, considers only the latter, *East Texas Motor Freight*, to be dispositive of the issues before it. That suit was brought by Mexican Americans claiming racial and ethnic discrimination due to their initial rejection for line driver jobs under the company's "no-transfer" policy and the subsequent discriminatory effect that this allegedly had on their seniority. Under the "no-transfer" plan, a city driver was forced to resign, and therefore lose seniority, in order to secure the more lucrative line-driver jobs. The plaintiffs in that case did not have the action certified as a class action. On the individual action, the plaintiffs clearly did not shoulder their burden of proof. The District Court dismissed, for the primary reason that a large majority of the union had only recently rejected a merger of the seniority lists of the two groups of drivers, and that the plaintiffs lacked the necessary qualifications for the line-driver jobs. The Court of Appeals also rejected the plaintiffs' individual claims, but on its own motion recognized the plaintiffs as representatives in a class action. The Supreme Court reversed the Court of Appeals, stating that Rule 23 requisites had not been complied with. But of even more significance is the fact that the Court did not see fit to consider whether there was discrimination present or not. As in the present case, the courts in both the individual and class actions ruled against the plaintiff. But the Supreme Court then remanded the case on the class action issue. In so doing the Court made it clear that the plaintiffs could not, on their own, without proof of individual or class discrimination, force liability on the defendants. The pertinent language is as follows:

> "The District Court found upon abundant evidence that these plaintiffs lacked the qualifications to be hired as line drivers. Thus, they could have

> suffered no injury as a result of the alleged discriminatory practices, and they were, therefore simply not eligible to represent a class of persons who did allegedly suffer injury. Furthermore, each named plaintiff stipulated that he had not been discriminated against with respect to the initial hire. In light of that stipulation they are hardly in a position to mount a classwide attack on the no-transfer rule and seniority system ..." 97 S.Ct. at page 1897.

Factually, the present case is very similar. The plaintiff in the case before us was found by both this Court and the Court of Appeals to have no claim either individually or as a class representative, yet liability was imposed upon the defendants. To follow the mandate of the Court of Appeals, and to order a merger of the two unions in this case would impose liability upon the defendants in a situation analogous to that found in *East Texas Motor Freight*, and this, we believe, would be contrary to the Supreme Court's ruling in that case. In the present case, it was determined by both this Court and the Court of Appeals that the plaintiff had suffered no racial discrimination at the hands of any of the defendants, and it was likewise determined by both Courts that no member of the alleged class had been discriminated against by these defendants. Both Courts concluded that the plaintiff was not the representative of a class, and thus, as in the *East Texas Motor Freight* case, he is hardly "in a position to mount a class-wide attack on ..." the defendants in this case. Thus, this Court concludes that under the law enunciated in *East Texas Motor Freight*, the defendants simply cannot win, as they did in both Courts here, and still be cast in judgment.

[3] This Court concludes, therefore, that in light of the jurisprudence as it has developed since the issuance of

the mandate in this case, it is compelled, pursuant to Rule 60 of the Federal Rules of Civil Procedure, to deviate from the mandate of the Court of Appeals without leave of Court. It further concludes that in light of the most recent case law from the Supreme Court, it would be illegal and unjust to compel the merger of the two unions under the circumstances of this case. Therefore, the mandate of the Court of Appeals in this case is modified and the plaintiff's suit is dismissed. Judgment has been entered herein accordingly.

APPENDIX "L"

* * *

§ 2000e-2. Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

APPENDIX "M"

* * *

§ 2000e-2. Unlawful employment practices

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

APPENDIX "N"

* * *

§ 2000e-5. Enforcement provisions

* * *

* * *

Attorney's fee; liability of Commission and United States for costs

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

Pub.L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104.

APPENDIX "O"

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

ALTON J. BAILEY
Plaintiff

CIVIL ACTION

VS.

NUMBER: 71-79

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO
Defendants

COMPLAINT

TO THE HONORABLE, THE JUDGE OF THE UNITED STATES DISTRICT COURT, FOR THE

EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

The complaint of ALTON J. BAILEY, a resident of the full age of majority of the Parish of East Baton Rouge, State of Louisiana, residing at 810 North 19th Street, Baton Rouge, Louisiana 70802 (hereinafter simply called "PLAINTIFF"), with respect represents, that:

I

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(4); 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 2201 and 2202. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. § 2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by:

a) 42 U.S.C. § 2000e et seq., providing for injunctive and other relief against racial discrimination in employment,

b) 42 U.S.C. § 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States, and

c) This is also a suit for a declaratory judgment of the rights established under Title VII of the Civil Rights Act of 1964.

II

Plaintiff brings this action on his own behalf and on behalf of other persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

The class which plaintiff represents is composed of Negro persons who are employed, or might be employed by (as the case may be) (1) RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., (6) or who are members or might be members of LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, at their Port Allen location and other locations in and around the City of Port Allen and/or the City of Baton Rouge, in the State of Louisiana, and who have been and continue to be or might be adversely affected by the practices complained of herein. There are common questions of law and fact affecting the rights of the members of the class who are, and continue to be limited, classified and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of race and color. These persons are so numerous that joinder of all members is impracticable. A common relief is sought. The interests of said class are adequately represented by plaintiff. Defendants have acted or refused to act on grounds generally applicable to the class.

III

This is a proceeding for a "Declaratory Judgment" as to plaintiff's rights and for a preliminary and permanent injunction, restraining RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COM-

PANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO (hereinafter simply called "DEFENDANTS") from maintaining a policy, practice, custom or usage of: (a) discriminating against plaintiff and other negro persons in this class because of race or color with respect to compensation, terms, conditions and privileges of employment, (b) discriminatory discharge, (c) refusal to hire, (d) refusal to refer, laterally transfer and promote, (e) retaliatory discharge, (f) refusing to employ Negro persons for certain jobs, e.g., Foreman, Walking Foreman, Checker or Clerk and Crane Operator, etc., (g) and more particularly, from refusing to hire named plaintiff because of his efforts and attempts to obtain equal employment opportunities for Negroes, (h) denying and/or refusing to employ Negro persons for certain jobs and from otherwise denying and/or refusing Negro persons equal employment opportunities on the ground of their race and color in violation of Title VII of the Civil Rights Act of 1964, and (i) to restrain the defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, from maintaining racially segregated labor organizations in violation of Title VII of the Civil Rights Act of 1964.

IV

The named plaintiff in this case is ALTON J. BAILEY, a Negro citizen of the United States and of the State of Louisiana, residing at 810 North 19th Street, Baton Rouge, Louisiana 70802. Plaintiff is a member in good standing of LOCAL 1830, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO and is eligible for

employment with the defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., and BATON ROUGE MARINE CONTRACTORS, INC.

V

The named defendants in this case are:

A. RYAN STEVEDORING COMPANY, INC., a foreign corporation, domiciled at Mobile, Alabama, and having as its agent for legal service of process: Mr. Frank E. Deeson, Jr., Post Office Box 463, New Orleans, Louisiana 70160 or 1710 Tchoupitoulas Street, New Orleans, Louisiana 70130. This defendant, RYAN STEVEDORING COMPANY, INC., is engaged in a business affecting commerce in the State of Louisiana, City of Port Allen, employs at least seventy-five (75) persons and is an "employer" within the meaning of 42 U.S.C. § 2000e-2 (a)(1)(2).

B. ROGERS TERMINAL AND SHIPPING CORPORATION, a foreign corporation domiciled at Dover, Delaware, and having as its agent for legal service of process: C T Corporation System, 1300 Hibernia Building, New Orleans, Louisiana 70112. This said defendant is engaged in a business affecting commerce in the State of Louisiana, City of Port Allen, employs at least seventy-five (75) persons and is an "employer" within the meaning of 42 U.S.C. § 2000e-2 (a)(1)(2).

C. LOUISIANA STEVEDORES, INC., a domestic corporation, domiciled in New Orleans, Louisiana, and having as its agent for legal service of process: Messrs. John H. Dolton and Peter L. Carter, 2300 International Trade Mart, 2 Canal Street, new Orleans, Louisiana

70130. This defendant is engaged in a business affecting commerce in the State of Louisiana, City of Port Allen, employs at least seventy-five (75) persons and is an "employer" within the meaning of 42 U.S.C. § 2000e-2 (a)(1)(2).

D. RAMSAY, SCARLETT AND COMPANY, INC., a foreign corporation, domiciled at Baltimore, Maryland, and having as its agent for legal service of process: C T Corporation, 1300 Hibernia Building, New Orleans, Louisiana 70112. This defendant is engaged in a business affecting commerce in the State of Louisiana, City of Port Allen, employs at least seventy-five (75) persons and is an "employer" within the meaning of 42 U.S.C. § 2000e-2 (a)(1)(2).

E. BATON ROUGE MARINE CONTRACTORS, INC., a domestic corporation, domiciled at New Orleans, Louisiana, and having as its agents for legal service of process: Mr. R.B. Sigerson, 1310 Whitney Building and Mr. Walter Carroll, 825 Whiteney Building, New Orleans, Louisiana 70130. This defendant is engaged in a business affecting commerce in the State of Louisiana, City of Port Allen, employs at least seventy-five (75) persons and is an "employer" within the meaning of 42 U.S.C. § 2000e-2 (a)(1)(2).

F. LOCAL 1830, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, is located in the City of Port Allen, Louisiana, and is engaged in an industry which affects commerce in the State of Louisiana, City of Port Allen, has a membership of more than seventy-five (75) persons and is a "labor organization" within the meaning of 42 U.S.C. § 2000e-2 (c)(1)(2)(3)(d). LOCAL 1833 is comprised entirely of White persons.

VI

The defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., and BATON ROUGE MARINE CONTRACTORS, INC., have instituted and maintained the following practices, policies, customs and usages which violate Title VII of the Civil Rights Act of 1964:

a) Employ persons according to their race and color dividing jobs between the defendants, LOCAL 1830, comprised entirely of Negro persons and LOCAL 1833, comprised entirely of White persons.

b) The said defendants deny Negro persons equal employment opportunities on the ground of their race and color, since they allocate approximately fifty (50%) percent of the jobs available to persons who are members of LOCAL 1830 and the remaining fifty (50%) percent to persons who are members of LOCAL 1833. LOCAL 1830 has approximately 200 members and LOCAL 1833 has approximately 100 members. Thus, White persons who comprise the membership of LOCAL 1833 have twice as great an opportunity to secure employment with the company as the negro persons who are members of LOCAL 1830.

c) The said defendants have failed to employ Negro persons as Walking Foremen, Checkers or Clerks and Crane Operators because of their race and color.

d) The said defendants reserve the most undesirable jobs for Negro persons.

The defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, have instituted and maintained the following practices, policies, customs and usages which violate Title VII of the Civil Rights Act of 1964:

a) Both of said defendants are parties to "collective bargaining agreements" with the defendants-employers which give recognition to racially segregated labor organizations and agreed to the allocation of jobs on a fifty (50%) percent basis to the membership of the racially segregated labor organizations.

VII

On information and belief, plaintiff alleges that the Collective Bargaining Agreements between the defendants-labor-organizations and the defendants-employers in other respects deny Negro persons equal employment opportunities in violation of Title VII of the Civil Rights Act of 1964.

VIII

On July 26, 1967 and March 22, 1967, plaintiff filed timely written "Charges of Discrimination"—under Oath—with the Equal Employment Opportunity Commission wherein the defendants were made respondents, all as will more fully appear by reference to said charges and the combined written DECISION thereto, in Cases Numbers 68-3-821E, 68-3-822E, 68-3-823E, 68-3-824E, 68-3-825E and 68-7-135U, By Equal Employment Opportunity Commission, electrocopies of which are hereto appended, filed herewith, and made a part hereof

the same as if herein written "in extenso," and marked EXHIBIT "A", "B", "C", "D", "E" and "F", respectively, for reference purposes and for identification herewith. The "Charges of Discrimination" were timely filed with the Equal Employment Opportunity Commission since the discriminatory practices were of a continuing nature and persist until this date in total or in part, and in some manner or form.

IX

Plaintiff is in receipt of letters from the Equal Employment Opportunity Commission, dated February 12, 1971, advising plaintiff that efforts to secure the defendants' voluntary compliance with Title VII of The Civil Rights Act of 1964, had failed and he was entitled to institute a "Civil Action" within thirty (30) days of receipt of said letters. Enclosed with the letters was the combined Decision of the Commission finding reasonable cause to believe that the defendants had violated said Title VII, which said letters, together with the combined Decision of the Commission, is hereto attached, filed herewith, and made a part hereof the same as if herein written "in extenso" and marked EXHIBIT "G", "H", "I", "J", "K" and "L" for reference purposes and identification herewith.

X

Plaintiff, ALTON J. BAILEY, has no plain, adequate or complete remedy at law to redress the wrong alleged, and this suit for a Preliminary and Permanent Injunction is his only means of securing adequate relief. Plaintiff and the class he represents are now suffering and will continue to suffer irrepairable injury if the defendants are

not enjoined from their discriminatory policies, practices, customs and usages based on race or color.

XI

Plaintiff desires and is entitled to be employed by the defendants without discrimination, to receive all pay that he would have received form July 26, 1967 until he is employed in his regular employment by the defendants without discrimination based on race and to any other relief this Honorable Court find appropriate under 42 U.S.C. § 2000e-5(g) et seq. and 42 U.S.C. § 1981.

XII

Plaintiff had to employ counsel in this matter and desires that the defendants be taxed as cost the amount of said attorney's fee to be determined by this Honorable Court.

WHEREFORE, plaintiff, ALTON J. BAILEY, prays that this Court advance his case on the Docket, order a speedy Hearing at the earliest practicable date causing this case to be in every way expedited and upon such Hearing to:

1. Grant plaintiff and the class he represents a Permanent Injunction, enjoining the defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., and BATON ROUGE MARINE CONTRACTORS, INC., from

    a) refusing to employ negro persons for certain jobs;

b) denying Negro persons equal employment opportunities with the said defendants;

c) employing persons according to their membership in racially segregated labor organizations;

d) from refusing to hire plaintiff, ALTON J. BAILEY, and the class he represents because of his and/or their attempts and efforts to obtain equal employment opportunities for Negro persons with the said defendants, and

e) otherwise employing persons according to their race and color.

2. Grant plaintiff and the class he represents a Permanent Injunction, enjoining the defendants, LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, from continuing to maintain racially segregated labor organizations.

3. Grant plaintiff and the class he represent a Declaratory Judgment on the grounds, or for the reasons, that the practices, policies, customs and usages herein complained of are violatives of the rights protect by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

4. Grant plaintiff, ALTON J. BAILEY, and members of the class he represents back pay in the form of wages which they have been denied because of the defendants', RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORA-

TION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC. and BATON ROUGE MARINE CONTRACTORS, INC., refusals to employ them in certain desirable jobs and seniority on those jobs from the time of the wrongful denials.

Plaintiff further prays that the defendants, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., BATON ROGUE MARINE CONTRACTORS, INC. and LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, be decreed indebted unto plaintiff and the class he represents—in wages and back pay—for intentionally engaging in unlawful employment practices charged and/or alleged in the complaint, which unlawful employment practices denied and deprived and/or denying and depriving plaintiff and the class he represents of his and/or their rights protected by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981; that said defendants be ordered to pay same with reasonable diligence all in accordance with the provisions of 42 U.S.C. § 2000e-5(g).

Plaintiff further prays that this Court will allow him his Court costs, reasonable attorney's fee and such further or alternative relief as may appear to the Court to be equitable and just.

Attorney for Plaintiff:

/s/ Johnnie A. Jones
JOHNNIE A. JONES

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

VERIFICATION

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in and for the Parish of East Baton Rouge, State of Louisiana, personally came and appeared:

----------ALTON J. BAILEY----------,

who, after being first duly sworn, did depose and say:

That he is the identical person called plaintiff in the foregoing COMPLAINT wherein he brings an Action against RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., BATON ROUGE MARINE CONTRACTORS, INC. and LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, for discriminatory policies and practices, etc., in employment, based on race, violative of Title VII of The Civil Rights Act of 1964 and 42 U.S.C. § 1981; that he has read said complaint and/or same has been read and explained to him, and that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

/s/ Alton J. Bailey
ALTON J. BAILEY

SWORN TO and SUBSCRIBED before me this 9th day of March, 1971.

/s/ Johnnie A. Jones
JOHNNIE A. JONES

14-O

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. No. 68-3-821E

Your Name: Alton J. Bailey
Phone Number: DI4-8032
Street Address: 810 North 18th Street
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)
Race or Color (x) Religious Creed ( )
National Origin ( ) Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Ryan Stevedoring Company
Street Address: _____
City: Port Allen State: LA Zip Code: _____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 (x)

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The aforesaid firm has refused to hire me because I have attempted to obtain equal employment opportunities for negroes

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: March 22, 1968 /s/ Alton J. Bailey

Subscribed and sworn to before me this 22 day of
March 1968
/s/ Equal Opportunity Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "A"

EXHIBIT "A" (continued)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Alton J. Bailey

Charging Party

vs.

Ryan Stevedoring Company Port Allen, Louisiana;	Case No. NO 68-3-821E
Rogers Terminal Port Allen, Louisiana;	NO 68-3-822E
Louisiana Stevedoring Company Port Allen, Louisiana;	NO 68-3-823E
Baton Rouge Marine Contracting Company Port Allen, Louisiana;	NO 68-2-825E
General Longshore Workers, ILA Local 1830 Port Allen, Louisiana;	NO 68-7-135U
and	
Ramsay, Scarlett and Company Burnside, Louisiana	NO 68-3-824E

Respondents

Date of alleged violation:	June 1, 1965 and Continuing
Date of filing of charges:	July 26, 1967 - March 22, 1968
Dates of service of charges:	April 2, 1968 - NO 68-3-821E
	April 2; 1968 - NO 68-3-822E
	April 12, 1968 - NO 68-3-823E
	March 25, 1968 - NO 68-3-824E
	April 8, 1968 - NO 68-2-825E
	April 11, 1968 - NO 68-7-135U

EXHIBIT "A" (continued)

DECISION

Summary of Charges

Charging Party alleges that Respondent Union is committing an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964 by attempting to deprive him of a livelihood because of his opposition to unlawful employment practices.

Charging Party alleges that Respondent Employers are committing an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964 by refusing to hire him because of his race (Negro) and race related activities.

Summary of Investigation

I. Respondent Union is an all Negro Local representing 200 Negro Longshoremen on the Baton Rouge, Louisiana, waterfront.

   Respondent Employers are stevedore companies doing business on the Baton Rouge, Louisiana, waterfront.

II. From 1959 until 1965, Charging Party was a highly active member of Respondent Union. Charging Party has been at odds with Respondent Union's President on a number of issues, including the question of equal employment rights for Negro Longshoremen. Charging Party has consistently espoused a more militant Union policy to combat waterfront practices

EXHIBIT "A" (continued)

which he believed unfair and which this Commission has ruled unlawful.

In early 1964, after Charging Party ran against the incumbent President's candidate for Union Secretary, hostility between Charging Party and the President heightened. On February 3, 1964, Charging Party was fined $1.00 for protesting a meeting procedure patently in violation of the Union by-laws. Because Charging Party refused to pay the fine (since ruled invalid by a U.S. District Court), the Union refused to accept Charging Party's tender of dues. On June 1, 1965, the Union President sent letters to various stevedoring companies requesting that Charging Party not be hired because of his non-payment of dues. As a result of this letter Charging Party's income dropped from $5,143.33 for the twelve months ending June 1, 1965, to less than $2,000 for the succeeding twelve months. Following Charging Party's charge with the National Labor Relations Board, a settlement agreement was executed by all parties. By the terms of this settlement, the Negro Local was required to pay Charging Party $836.38 and to cease its efforts to prevent him from working.

Six days after this settlement agreement was signed, the Union President levied a second invalid $1.00 find on Charging Party. Charging Party again refused to pay and again found difficulty in obtaining work. After Charging Party filed a second charge with the National Labor Relations Board, a second settlement agreement awarded Charging Party $129.94 and again required the Union to cease unlawful activities against Charging Party. Charging Party refused to

sign the second settlement, believing that this award did not fairly reflect his losses. Notwithstanding, the Board approved this settlement agreement.

After the second settlement, Charging Party's income remained well below its pre-1965 level. The Union President has not made any formal statements to stevedoring companies concerning Charging Party's Union status because "every time I say something about Bailey I end up in court." The President claims that, as far as he is concerned, Charging Party has not been a member of the Union since refusing to pay the first fine. Concerning the possibility that the Union might have used informal channels of communications with stevedoring companies to keep Charging Party out of work, the President states that "it's not my concern if other members [tell the Companies of the Union's views:]" Charging Party was arrested for trespassing when he attempted to attend a Union meeting.

A respondent stevedoring company's representative states that "it is a matter of common knowledge in the stevedoring industry that Bailey is not in good standing with the Union." Charging Party has frequently been hired at "shapeups" only after all Union members and, on at least one occasion, after a non-Union stevedore.

Since evidence of unlawful motive is seldom direct, the Commission must rely upon reasonable inferences based upon the totality of circumstances in making its findings.

EXHIBIT "A" (continued)

It appears that Respondent Union's President has a number of motives for hostility toward Charging Party, some of which are not cognizable under Title VII. Certainly, the fact that Charging Party knocked out the President's teeth, when the President attacked him, and the fact that Charging Party came within eight votes of wresting control of the local from the incumbent President probably weighed heavily in the Union Official's decision to retaliate against Charging Party. It is equally plain from the evidence of record that the Civil rights issue was the major one dividing Charging Party and the Union President. The President of the Caucasian Longshoreman's Local describes the incumbent Negro President, whom he has knows since boyhood, as "a fine old man" and Charging Party as a "radical" who "would not be satisfied until Negroes had all the jobs." The attorney for the Negro Local states that "certain persons trying to change the Union into a civil rights organization are doing a great harm to negro citizens in that hire actions are not palatable to the white community."

Investigation discloses that, in 1962, Charging Party circulated a petition seeking the removal of the Union President for failure to properly perform his duties, a measure aimed particularly at the President's failure to take positive steps to eliminate discrimination. In 1964 and again in 1966, Charging Party ran for office in the Union — losing an election for President by only eight votes in 1966 — on a platform advocating greater militancy against discriminatory treatment of negro Stevedores.

EXHIBIT "A" (continued)

In view of this evidence, the Commission may reasonable infer that Charging Party's civil rights militancy weighed heavily in the Union President's motives. Discrimination, thus motivated, violates the Act.

As to Respondent Employers, the Commission finds that Respondent follows the practice of hiring one man from the Caucasian Local for every man hired from the negro Local. The Commission has already ruled that such hiring practices with regard to the unlawfully segregated locals violates Title VII. (Case No. 7-2-106).

Decision

Reasonable cause exists to believe that Respondent Union has violated Section 704 (a) of Title VII of the Civil Rights Act of 1964 by discriminating against Charging Party because he has opposed practices unlawful under the Act.

Reasonable cause exists to believe that Respondent Employer have violated Title VII of the Civil Rights Act of 1964 by discriminatory against Charging Party because of his race.

For the Commission:

Feb 17, 1969

/s/ Marie D. Wilson
Marie D. Wilson, Secretary

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. No. 68-3-822E

Your Name: Alton J. Bailey
Phone Number: _____
Street Address: 810 North 19th St
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)
Race or Color (x) Religious Creed ( )
National Origin ( ) Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Rogers Terminal
Street Address: _____
City: Port Allen State: LA Zip Code: _____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 ()

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The aforesaid firm has refused to hire me because I have attempted to obtain equal employment opportunities for negroes

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: March 23, 1968 /s/ Alton J. Bailey

Subscribed and sworn to before me this 22 day of
March 196 8
/s/ Equal Oportunity Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "B"

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. No. 68-3-823E

Your Name: Alton J. Bailey
Phone Number: _____
Street Address: 810 North 19th St
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)
Race or Color (x) Religious Creed ( )
National Origin ( ) Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Louisiana Stevedoring Company
Street Address: _____
City: Port Allen State: Louisiana Zip Code: ____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 (x)

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The firm has refused to hire me because I have attempted to obtain equal employment opportunities for negroes

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: March 22, 1968 /s/ Alton J. Bailey

Subscribed and sworn to before me this 22 day of
March 1968
/s/ Equal Opportunity Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "C"

26-O

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. No. 68-3-824E

Your Name: Alton J. Bailey
Phone Number: _____
Street Address: 810 North 19th St
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)
Race or Color (X) Religious Creed ( )
National Origin ( ) Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Ramsay Scarlett and Co
Street Address: _____
City: Burnside State: LA Zip Code: _____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 ()

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The firm has refused to hire me because I have attempted to obtain equal employment opportunities for negroes

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: March 22, 1968 /s/ Alton J. Bailey

Subscribed and sworn to before me this 22 day of
March 196 8
/s/ Equal Employment Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "D"

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. No. 68-3-825E

Your Name: Alton J. Bailey
Phone Number: DI4-8032
Street Address: 810 North 19th St
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)
Race or Color (x) Religious Creed ( )
National Origin ( ) Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Baton Rouge Marine Contracting Co
Street Address: _____
City: Port Allen State: LA Zip Code: _____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 (x)

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The aforesaid firm has refused to hire me because I have attempted to obtain equal employment opportunities for negroes

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: March 22, 1968 /s/ Alton J. Bailey

Subscribed and sworn to before me this 22 day of
March 1968
/s/ Equal Opportunity Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "E"

30-O

CHARGE OF DISCRIMINATION

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area as soon as possible. It must be mailed within 90 days after the discriminatory act took place. (See addresses on back page). This form is to be used only to file a charge of discrimination basd on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. 68-7-135U

Your Name: Alton J. Bailey
Phone Number: DI4-8032
Street Address: 810 North 19th St
City: Baton Rouge State: LA Zip Code: _____

WAS THE DISCRIMINATION BECAUSE OF:
(Please check one)

Race or Color (x)	Religious Creed ( )
National Origin ( )	Sex ( )

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
Name: Local 1830, International Longshoremen's Association
Street Address: 395 Court Street
City: Port Allen State: LA Zip Code: _____
AND (other parties if any): _____

Have you filed this charge with a state or local government agency? Yes ( ) When: No ( )

If your charge is against a company or a union, how many employees or members?
Over 25 () Over 50 () Over 75 ()

The most recent date on which this discrimination took place:
Month: continuing Day: ____ Year: _____

Explain what unfair thing was done to you:
The labor organization has caused shipping companies in the Port of Baton Rouge not to hire me because I have attempted to obtain equality of treatment for negroes.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date: July 26, 1967 /s/ Alton J. Bailey

Subscribed and sworn to before me this 11 day of April 196 8
/s/ Equal Opportunity Office

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to the form sworn to.

EXHIBIT "F"

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-3-821E

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: Mr. W. R. Hammett, Manager
Ryan Stevedoring Company
Field Attorney

Page 2 of EXHIBIT "G"
(e.g., DECISION, supra)

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-3-822E

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: Mr. William M. Bordasch, Manager
Rogers Terminal
Field Attorney

Page 2 of EXHIBIT "H"
(e.g., DECISION, supra)

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-3-823E

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: Mr. Marion Bergeron, Manager
Louisiana Stevedoring Company
Field Attorney

Page 2 of EXHIBIT "I"
(e.g., DECISION, supra)

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-3-824E

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

EXHIBIT "J"

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: Mr. R. C. Daniel
Ramsey, Scarlett & Co.
Field Attorney

Page 2 of EXHIBIT "J"
(e.g., DECISION, supra)

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-3-825E

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: Mr. Robert Quiaid, Manager
Baton Rouge Marine Conracting Co.
Field Attorney

Page 2 of EXHIBIT "K"
(e.g., DECISION, supra)

NEW ORLEANS AREA OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

333 ST. CHARLES STREET
NEW ORLEANS, LOUISIANA 70130

February 12, 1971
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alton J. Bailey
810 N. 19th Street
Baton Rouge, Louisiana

RE: N.O. 68-7-135U

Dear Mr. Bailey:

This is to advise you that more than sixty (60) days have elapsed since the filing of your charge in the above case, and you have personally requested, pursuant to the Commission's Rules 29 C.F.R., Section 1601.25a(b) that this statutory notice issue.

Therefore, pursuant to section 706(e) of the Civil Rights Act of 1964, Title VII, you are hereby notified that you may, within thirty (30) days of receipt of this letter institute civil action in the appropriate Federal District Court. If you are unable to retain an attorney, the Federal District Court is authorized, in its discretion, to appoint an

EXHIBIT "L"

attorney to represent you and to authorize the commencement of suit without payment of fees, costs or security.

If you decide to institute suit and find you need such assistance, you may take this letter to the Clerk of the Federal District Court nearest to the place where the alleged discrimination occurred and request that a Federal District Judge appoint counsel to represent you.

The Commission will continue to process your case. You should be aware, however, that failure to institute suit within this 30-day period may cause you to lose your right to seek judicial relief against the Respondent.

Please feel free to contact the Commission if you have further questions on this matter.

Should you decide to sue please have your attorney complete the enclosed postcards as soon as possible.

Sincerely Yours,

/s/ Glenn Clasen
Glenn P. Clasen
Field Director

Enclosure

cc: President, General Longshore
Workers ILA, Local 1830
Field Attorney

Page 2 of EXHIBIT "L"
(e.g., DECISION, supra)

INFORMATION FOR SERVICE

Please serve the defendants:

1. Ryan Stevedoring Company, Inc.
   c/o Mr. Frank E. Deeson, Jr.
   Post Office Box 463
   New Orleans, Louisiana 70130
   or
   1710 Tchoupitoulas Street
   New Orleans, Louisiana 70130

2. Rogers Terminal and Shipping Corporation
   c/o C T Corporation System
   1300 Hibernia Building
   New Orleans, Louisiana 70112

3. Louisiana Stevedores, Inc.
   c/o Mr. John H. Dolton and
   Mr. Peter L. Carter
   2300 International Trade Mart
   2 Canal Street
   New Orleans, Louisiana 70130

4. Ramsay, Scarlett and Company, Inc.
   C/o C T Corporation System
   1300 Hibernia Building
   New Orleans, Louisiana 70112

5. Baton Rouge Marine Contractors, Inc.
   c/o Mr. R. B. Sigerson
   1310 Whitney Building
   New Orleans, Louisiana 70130
   or
   Mr. Walter Carroll
   825 Whitney Building
   New Orleans, Louisiana 70130

6. Local 1830, General Longshore Workers
International Longshoremen's Association,
AFL–CIO
Port Allen, Louisiana, 70767

7. Local 1833, General Longshore Workers
International Longshoremen's Association,
AFL–CIO
Port Allen, Louisiana 70767

APPENDIX "P"

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 74-2544

ALTON J. BAILEY

Plaintiff-Appellant

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORP., (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO

Defendants-Appellees

2–P

Appeal from the United States District Court
From the Middle District of Louisiana

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

JOHNNIE A. JONES
Attorney at Law
The JoAn SEAD Building
1261-65 Government St.
Baton Rouge, LA 70802
Telephone 504/383-8573

CERTIFICATE REQUIRED BY FIFTH CIRCUIT LOCAL RULE 13(a)

The undersigned, counsel of record for Alton J. Bailey, Plaintiff-Appellant, certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that Judges of this court may evaluate possible disqualification or refusal pursuant to Local Rule 13(a).

Alton J. Bailey

Henry Wells, Jr., Plaintiff-Appellant in suite Nos. 73-3173 and 74-1233 of the Docket of this Court

/s/ Johnnie A. Jones
JOHNNIE A. JONES
Attorney of record for Plaintiff, Alton J. Bailey

SUBJECT INDEX

Page

Statement of Issues Presented ii

Statement of the Case 2

Statement and Argument 3

Conclusion 9

Certificate of Service 11

INDEX OF AUTHORITIES

Page

CASES

Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 2 FEP Cases 121 (1969) 4

Hicks v. Crown Zellerbach Corporation, 310 F. Supp. 536, 2 FEP Case 433 (DC La- 1970) 10

Patterson v. Youngstown Sheet & Tube Co., 7 FEP Cases 356 (DC Ind. 1972) 5

United States v. International Longshoremen's Association, 334 F.Supp. 976, 4 FEP Case 6 (S.D. TEX. - 1971) 6

United States v. International Longshoremen's Association, 460 F.2d 497, 4 FEP Cases 719 (CA 4 - 1972) 7

STATUTES

42 U.S.C.A. § 1981 2

42 U.S.C.A. § 2000e-5(g) 10

OTHER AUTHORITIES

Title VII Civil Rights Act of 1964 4

Civil Rights Act of 1964, Section 703(c)(2) 9

6–P

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 74-2544

ALTON J. BAILEY

Plaintiff-Appellant

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORP., (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO

Defendants-Appellees

Appeal from the United States District Court
From the Middle District of Louisiana

STATEMENT OF ISSUES PRESENTED

1. Whether, the plaintiff, ALTON J. BAILEY, a black male, can maintain a class action for discrimination on behalf of all blacks similarly situated against the defendants, notwithstanding that a total of 204 members of LOCAL 1830 out of an approximate membership of 232 members have voluntarily petitioned this Court stating that BAILEY'S claims and contentions are not representative of theirs and that they do not wish to be represented by ALTON J. BAILEY?

2. Whether, the defendants, LOCAL 1830 and LOCAL 1833, were then, and are presently in violation of Section 703(c)(2) of the Civil Rights Act of 1964, which makes it an unlawful employment practice for a labor organization "to limit, segregate, or classify its membership or applicants for membership or to classify or fail to refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin," by maintaining segregated LOCALS for whites and blacks?

3. Whether, under the case made and provided, the appellees are indebted unto appellant, and the class he represents, in wages and back pay for intentionally engaging in unlawful employment practices charged and alleged in the Complaint, which unlawful employment practices denied and deprived and/or denying and depriving appellant and the class he represents of rights accorded them and protected by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981; and whether said appellees

should be ordered to pay same with reasonable diligence in accordance with the provisions of 42 U.S.C. § 2000e-5(g)?

STATEMENT OF THE CASE

This is an appeal from a judgment dismissing plaintiff's claims *in tota* upon the following facts:

The plaintiff-appellant, ALTON J. BAILEY, is a member in good standing of LOCAL 1830, GENERAL LONGSHORE WORKERS, I.L.A., AFL–CIO, and is eligible for employment with the defendants-appellees, RYAN STEVEDORING COMPANY, INC., ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC., and BATON ROUGE MARINE CONTRACTORS, INC.

On July 26, 1967, and March 22, 1967, the plaintiff filed timely written "Charges of Discrimination" with the Employment Opportunity Commission wherein the defendants were made respondents. After an unsuccessful attempt by the Equal Employment Opportunity Commission to secure the defendants' voluntary compliance with Title VII of the Civil Rights Act of 1964, plaintiff instituted this action in the United States District Court for the Middle District of Louisiana.

That Court dismissed the plaintiff-appellant's action on the grounds that ALTON J. BAILEY was not representative of the class, and there was no evidence of racial discrimination by the unions, or the employers.

STATEMENT AND ARGUMENT

The appellant, ALTON J. BAILEY, instituted this action based upon racial discrimination on behalf of himself and other persons similarly situated. The judge, *a quo*, in his written opinion stated that the appellant, BAILEY, was not a true representative of the class. This opinion was based on the fact that "204 members of plaintiff's union, out of a total membership of approximately 230, have affirmatively stated, by petition filed of record, that they do not, in any way, share the views of this plaintiff."

However, the lower court pretermitted entirely the fact that the appellant, ALTON J. BAILEY, action was based on racial discrimination, which, of necessity, is a class action. To-wit:

> A suit for violation of Title VII is necessarily a class action as the evil sought to be ended is discriminatory on the basis of a class characteristic, i.e., race, sex, religion or national origin. *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 2 FEP Cases 121 (1969).

Therefore, the determining factor as to whether the appellant presents a class action is determined, in this case, by the appellant's class characteristic, and not by the number of other persons similarly situated, who are willing to join with him, BAILEY, in the prosecution of the discriminatory practices, and/or customs.

The appellant, ALTON J. BAILEY, has alleged and proven that the defendants have instituted and maintained the following practices, customs and usages,

which violate Title VII of the Civil Rights Act of 1964, viz:

a) Employ persons according to their race and color dividing jobs equally between the defendants, LOCAL 1830, comprised entirely of Negro persons and a membership of approximately 200, and LOCAL 1833, comprised entirely of white persons and a member hip of approximately 100.

b) White persons have an opportunity twice as great to secure employment with the defendants Stevedoring Companies as do the black persons.

c) The defendants, LOCAL 1830 and LOCAL 1833, are in violation of Title VII of the Civil Rights At of 1964 insofar as they are parties to "Collective Bargaining Agreements" with the defendants Stevedoring Companies which recognize racially segregated labor organizations and job assignments.

All these claims presented by the appellant, ALTON J. BAILEY, are based upon a characteristic common to a class, or a particular class of people, i.e., the black race.

Furthermore, in a 1972 case, a federal district court permitted a class action for alleged racial discrimination, even though only six (6) of the Negro employees bringing action applied for apprenticeship programs. The Court stated that:

> Federal district court will permit Title VII action challenging employer's apprenticeship program as racially discriminatory to proceed as class action, even though only six of the negro employees bringing action applied for program, since (1)

> class is not limited to those who applied for program, and (2) no specified number of persons is needed to maintain class action under Rule 23 or Federal Rules of Civil Procedures, and courts have been liberal in applying numerosity requirements where, as here, court has adopted "across the board" concept. *Patterson v. Youngstown Sheet & Tube Co.*, 7 FEP Cases 356 (DC Ind. 1972)

Therefore, based upon the above reasons the appellant, ALTON J. BAILEY, did properly invoke the federal class action, and should have been allowed to continue his class action against the employer-defendants, and the union-defendants, for their racially discriminatory practices as aforementioned.

Turning now to the second issue at hand, namely, LOCAL 1830 and LOCAL 1833, discriminatory practices and/or customs of maintaining segregated unions for blacks and whites.

The trial court in its written opinion stated that during

> [T]he trial of this case the Court announced that the issue of maintenance of separate locals based upon race would be split. But evidence was permitted to be introduced, ... which shows beyond doubt that Local 1830 was chartered as and is in fact a local for blacks only and that Local 1833 was chartered as and is a local for whites only. Since the evidence shows beyond doubt that this maintaining of separate segregated locals has not, in fact, deprived blacks of either hours of work or assignments when qualified to do the "better" jobs, the only question remaining is whether or not the existence of the two segregated locals is per se a violation of the Civil Rights Act of 1964.

> This Court concludes that there is no per se violation in this case, the existence of these two segregated locals does not violate the Civil Rights Act of 1964.

In support of the above statement, the Court relied upon *United States v. International Longshoremen's Association*, 334 F. Supp. 976, 4 FEP Case 6 (S.D. Tex - 1971). However, a mere reading of this case will point out, unquestionably, that the decision rendered in the case is more favorable to the appellant, ALTON J. BAILEY, rather than the appellees, in the instant case. In many ways the facts are very similar. The plaintiff, in the above case, was alleging racial discrimination of the labor unions, that were maintaining two segregated labor unions, one for whites and one for blacks, and was employing the workers on a fifty-fifty basis. But notwithstanding such practices by the labor unions, the Court still found that racially discriminatory practices exist, notwithstanding that the black union and the white union did not want to merge, and the blacks considered their union beneficial to the community, to-wit:

> International, district, and local unions violated Title VII of Civil Rights Act of 1964 by chartering and maintaining locals segregated on basis of race and national origin and by maintaining rule of dividing work on half and half basis between white and Negro locals, since this conduct deprives white, Negro, and Mexican-American longshoremen of equal working opportunities depending upon which group is in the majority in different ports.

Although the Court decided that there was no per se violation of the Civil Rights Act of 1964, the Court found that even

> ... under the fifty-fifty rule, Negroes, and in some cases Mexican-Americans, having been segregated on the basis of their race or national origin, have been forced to accept a diminished opportunity to earn wages, receive union benefit, work better cargo and otherwise enjoy employment opportunities solely on the basis of their races. *United States v. International Longshoremen's Association, supra.*

Also, in the next case, *United States v. International Longshoremen's Association*, 460 F.2d 497, 4 FEP Cases 719 (CA 4 - 1972), in which the trial court relied on, and states that the facts could "easily" be distinguished from the instant case, is once again misleading. The language of the case favors the plaintiff-appellant, ALTON J. BAILEY, and should not be ignored solely on the basis that the Court found evidence of much discrimination on work assignments, and that the blacks were the recipients of the discrimination. For it was stated that the

> Federal district court did not err in (a) finding that union violated Title VII of Civil Rights Act of 1964 by chartering and maintaining racially segregated local unions and (b) ordering merging of locals, even though locals have a few members of opposite race and do not have racially restrictive by-laws. (1) Maintenance of racially segregated locals inevitably breeds discrimination in that racial segregation limits both Negro and white employees to advancement only within confines of their races; (2) abolition of dual hiring halls, as well as other reforms, does not eliminate necessity for merger, inasmuch as failure of union to secure equal employment opportunities for its negro members in all jobs for which they are qualified can be remedied only by merger; (3) merger of locals does not infringe upon workers' right to

freedom of association guaranteed by First Amendment to United States Constitution.

Therefore, the plaintiff-appellant firmly believes that based upon the aforementioned reasons, a judgment should be rendered in his favor, and, others similarly situated, in this cause.

The record clearly establishes that appellant should have worked 1,906 hours annually since the passage of the 1964 Civil Rights Act (R-155). The record also shows that employers issued instructions to their foremen not to hire appellant (R-169), and that Mr. Russell DiBenedetto, Administrator for the Baton Rouge Steam Ship Association, who testified that he was charged with the responsibility of maintaining the reporting record for the hiring of the Stevedores; that appellant, during the period of October 1, 1973, through March 31, 1974, a period of twenty-six (26) weeks reported for work eighty-three (83) days and was only hired for forty-eight (48) of those days but was not hired for thirty-five (35) of those days (R-246); the record clearly bears out the fact that appellant was consistently discriminated against in the hiring-employment-practices.

CONCLUSION

The plaintiff-appellant, ALTON J. BAILEY, instituted this action against the racially discriminatory practices of the appellees. The appellant has throughout the trial, and now on appeal, maintained and proved his burden of racially discriminatory practices and customs of the appellees. The appellant has shown and re-shown, proven and re-proven, that the practices of the appellees are in

violation of the Civil Rights Act of 1964, specifically, Sc. 703 (c)(2) of the Act, which states that

> It shall be an unlawful employment practice for a labor organization to limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex or national origin.

The plaintiff-appellant firmly contends that such practices now used by the defendants violate or tend to violate his Civil Rights, and the Civil Rights of other blacks similarly situated, which acts of the appellees, employers and labor unions, are affirmatively prohibited by Section 703 (c)(2) of the Civil Rights Act of 1964. Furthermore, the plaintiff-appellant, ALTON J. BAILEY, and all other blacks similarly situated, are entitled to a judgment in their favor for the above reasons, and also as a matter of law as denounced in *Hicks v. Crown Zellerbach Corporation*, 310 F.Supp. 536, 2 FEP Cases 433 (DC La - 1970), that is,

> Maintenance of separate local unions for Negro and white employees at plant violates Section 703 (c)(2) of Civil Rights Act of 1964, ...

The plaintiff, ALTON J. BAILEY, and the class he represents are entitled to "back pay" and Attorney's fees under the provisions of 42 U.S.C. § 2000e-5 (g).

/s/ Johnnie A. Jones
JOHNNIE A. JONES
Attorney for Plaintiff

The JoAn SEAD Building
1261-65 Government St.
Baton Rouge, LA 70802
Telephone: 504/383-8573

CERTIFICATE

I certify that a copy of the above and foregoing "BRIEF ON BEHALF OF PLAINTIFF" has been mailed to counsel for defendants, to-wit:

Mr. Robert Kleinpeter
Attorney at Law
Suite 208, American Bak Building
4962 Florida Blvd.
P.O. Box 66443
Baton Rouge, LA 70806

Mr. Joseph W. Cole, Jr.
Attorney at Law
P.O. Box 26
Port Allen, LA 70767

Mr. James A. George
George & Moore
Attorneys at Law
Suite 115, Attorneys Building
300 Louisiana Avenue
Baton Rouge, LA 70821

Baton Rouge, Louisiana, this 24 day of October, 1974.

/s/ Johnnie A. Jones
JOHNNIE A. JONES
Attorney at Law

The JoAn SEAD Building
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APPENDIX "Q"

MEMORANDUM CASES

No. 76-389, Local 1830 and 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO, petitioners, v. Alton J. Bailey

429 U.S. 1052, 50 L.Ed. 2d. 769, 97 S.Ct. 767.

January 10, 1977. Motion of respondent for leave to proceed in forms pauperis and petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 528 F.2d. 551 and 533 F.2d. 976.

APPENDIX "R"

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

vs. CIVIL ACTION
No. 71-79

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO
Defendants

MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(B)(5) AND (6)

Comes now all defendants and move the Court to set aside and relieve defendants from the mandate or judgment issued on June 25, 1976 remanding to this Court the above cause to proceed in accordance with the opinion of the court.

The United States Court of Appeals having concluded that the court was in error in refusing to grant appellant's motion for permanent injunction against the continued operation of segregated locals apparently has ordered the court to merge Local Unions 1830 (black) and 1833 (white).

Movers allege that the matter is now in the hands of the District Court and that said mandate, judgment or order is contrary to law and recent decisions of the Supreme Court of the United States in that prior case and theories on which it is based has been reversed or otherwise vacated and it is no longer equitable that the judgment should have prospective application.

WHEREFORE, movers pray that the judgment be set aside and the case dismissed.

Alternatively, if this Court feels that it is bound by the mandate of the Circuit Court rather than the decision of the United States Supreme Court then movers pray that further proceedings be stayed pending an application for a Rule 60(b) relief or a petition for a bill of review to the Court of Appeals, and for all general and equitable relief.

Respectfully submitted,

/s/ C. Paul Barker

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Glusman, Moore, Lopez
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P.O. Box 2630
Baton Rouge, LA 70821

Attorneys for Defendants

CERTIFICATE

I certify that a copy of the above and foregoing Motion has been served on Johnnie A. Jones, 1261-65 Government Street, Baton Rouge, LA 70802, attorney for plaintiff, by depositing same in the U.S. Mail, postage prepaid, this 6th day of July, 1977.

/s/ C. Paul Barker
C. Paul Barker

APPENDIX "S"

MEMORANDUM CASES

No. 80-569, Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL–CIO, petitioners, v. Alton J. Bailey, et al.

450 U.S. 964, 67 L.Ed.2d. 613, 101 S.Ct. 1479.

March 2, 1981. Petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit denied.

Same case below, 613 F.2d. 588, 22 BNA FEP Cas 445, 22 CCH EPD ¶ 30742.

APPENDIX "T"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY,
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, 93) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

MOTION FOR ATTORNEY'S FEES, COSTS AND EXPENSES

NOW INTO COURT, through his undersigned counsel of record, and pursuant to 'The Civil Rights Act of 1964,' Title VII, § 706(k), 42 U.S.C. § 2000e-5(k), and "The Civil Rights Attorney's Awards Act of 1976," 42 U.S.C. § 1988, comes ALTON J. BAILEY, the plaintiff and prevailing party in the above-captioned action, and moves the Court to order the defendants, (1) RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES INC., (4) RAMSAY, SCARLETT AND COMPANY INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL UNION 3033 (formerly Locals 1830 and 1833), GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, to pay unto JOHNNIE A. JONES, as attorney's fees, the sum of Three Hundred Thousand One Hundred Thirty-five and No/100 Dollars ($300,135.00) for having been successfully in his representation of Plaintiff in the prosecution of the above-captioned action against the Defendants; and to reimburse out-of-pocket costs and expenses in the total sum of Three Thousand Six Hundred Thirty-seven and 92/100 Dollars—or an aggregate sum of Three Hundred Three Thousand Seven Hundred Seventy-two and 92/100 Dollars ($303,772.92).

WHEREFORE, plaintiff-movant, ALTON J. BAILEY, prays that this, his 'Motion for Attorney's Fees, Costs and Expenses,' be maintained; that, in due course, the defendants, (1) RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 3033 (formerly Locals 1830 and

1833), GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, severally and jointly, be ordered to pay unto JOHNNIE A. JONES, as attorney's fees, the sum of Three Hundred Thousand One Hundred Thirty-five and No/100 Dollars ($300,135.00); and, as out-of-pocket costs and expenses, the sum of Three Thousand Six Hundred Thirty-seven and 92/100 Dollars ($3,637.92), or an aggregate sum of Three Hundred Three Thousand Seven Hundred Seventy-two and 92/100 Dollars ($303,772.92), all in accordance with the tenor of the entirety of these premises, which includes the 'Affidavit of Attorney in Support of Motion for Attorney's Fees,' which is hereto appended, filed herewith, submitted and made apart hereof the same as if herein set forth at length.

Respectfully submitted,

Attorneys for Plaintiff-Movant:
JONES & JONES

DATED: June 14, 1983

/s/ Johnnie A. Jones
JOHNNIE A. JONES,
Trial Attorney
Taylor Building, Suite 215
251 Florida St.
Baton Rouge, LA 70801
Telephone: 504/383-8573

NOTICE OF MOTION

To: Attorneys for the Defendants, to-wit:

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PLEASE TAKE NOTICE, that pursuant to Local Rule 5 of the Court, and upon the papers and proceedings herein, the above and foregoing motion will be brought on for hearing on Friday, July 15, 1983, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, in the United States District Court for the Middle District of Louisiana, located at 707 Florida Street of the City of Baton Rouge, Louisiana 70801.

Respectfully,

Attorneys for Plaintiff-Movant:
JONES & JONES

DATED: June 14, 1983

/s/ Johnnie A. Jones
JOHNNIE A. JONES,
Trial Attorney

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiff-movant, Alton J. Bailey, does hereby certify that a copy hereof and of these filings, 'Motion for Attorney's Fees, Costs and Expenses,' 'Affidavit of Attorney in Support of Motion for Attorney's Fees' and 'Memorandum of Authority in Support of Motion for Attorney's Fees,' are this day, by regular United States Mail, first-class postage prepaid, being forwarded to the opposing counsel of record, whose names and addressed are hereinabove specially set forth in the 'Notice of Motion'.

Baton Rouge, Louisiana, this 14 day of June, 1983

/s/ Johnnie A. Jones
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Trial Attorney
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Telephone: 504/383-8573

APPENDIX "U"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY,
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, 93) LOUISIANA STEVEDORES, INC., 94) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT OF ATTORNEY IN SUPPORT OF 'MOTION FOR ATTORNEY'S FEES'

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

----------JOHNNIE A. JONES----------,

who, upon Oath, did depose and say:

That, on February 22, 1971, ALTON J. BAILEY, the plaintiff in the above-captioned action, retained and employed him to be and to represent him as such via the above-captioned action against (1) RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., 94) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO, the defendants in the above-captioned action, for engaging in unlawfully race-based discrimination in employment practices against the plaintiff, ALTON J. BAILEY, individually, and other members of the 'black race' similarly situated, in violation of 'The Civil Rights Act of 1964,' Title VII, 42 U.S.C. § 2000e et seq., and 'The Civil Rights Act of 1870,' 42 U.S.C. § 1981.

That in representation of the plaintiff, ALTON J. BAILEY, who is the prevailing party in the above-captioned action within the intendment of the 'The Civil Rights Attorney's Fees Awards Act of 1976,' 42 U.S.C. § 1988, and 'The Civil Rights Act of 1964,' Title VII, § 706(k), 42 U.S.C. § 2000e-5(k), appearer/affiant, JOHNNIE A. JONES, over the period of more than twelve (12)

years, commencing February 22, 1971, to date, has spent a conservative estimation of Two Thousand One and Two Tenths (2001.9) Hours, or more, as specified in the chronological 'Schedule of Hours,' viz:

I. ATTORNEY'S TIME:	**HOURS:**
February 22, 27, 1971 Various meeting and conferences with Plaintiff, et al.	38.0
March 1-11, 1971 Preparation and filing of Complaint	10.5
April 12-17, 1971 Research on Answers filed by the defendants, Roger & Shipping Corporation, Louisiana Stevedores, Inc., Ramsay Scarlett Company, Inc., and Baton Rouge Marine Corporation, Inc., together with various meeting and conferences with Plaintiff, et al.	25.3
May 28-June 12, 1971 Research on Answer of Local 1833 General Longshore Workers, International Longshoremen's Association, AFL-CIO, together with conferences and meetings with Plaintiff, et al.	9.5
July 5-10, 1972 Meeting and conferences with Plaintiff, et al., in reference to Notice of Calling of Docket	2.5
July 8-21, 1972 Conferences with Plaintiff, et al., Preparation of Trial Request, Court Appearance	6.5

August 13-20, 1972 Research on Answer filed by the defendant, Ryan Stevedoring Company, together with conferences and meeting with Plaintiff, et al.	3.2
September 23, 1972 Conference with Plaintiff, et al.	1.5
December 10, 1972 Conference with Plaintiff, et al.	2.5
March 17, 1973 Conference with Plaintiff, et al.	8.0
May 26, 1973 Conference with Plaintiff, et al.	3.0
September 1, 1973 Conference with Plaintiff, et al.	2.0
October 27, 1973 Conference with Plaintiff, et al.	2.0
November 17, 1973 Conference with Plaintiff, et al.	2.0
November 17, 1973 Conference with Plaintiff, et al., discussion of preparation of Pretrial Order	8.5
November 26-December 12, 1973 Preparation of Pretrial Order, Conferences with Plaintiff, et al., Preparation of Default against the defendant, Local 1830, filing of Pretrial Order and reviewing of old and new filings	45.5
December 13, 1973 Pretrial Conference, Conference with Plaintiff et al.	8.5

December 17-22, 1973
Research on Answer of Local 1830,
General Longshore Workers,
International Longshoremen's Association,
AFL-CIO, and conferences with Plaintiff, et al. 3.3

January 2-5, 1974
Studied Defendants' Motion for Leave
to Amend Pretrial Order and conferences
with Plaintiff 2.5

February 10-11, 1974
Conferences with Plaintiff, relative to
settlement possibilities to be discussed
in connection with the ensuing
Status Conference/02-12-74 8.5

February 12-14, 1974
Status Conference,
Conference with Plaintiff 9.5

March 8-15, 1974
Research, Preparation of Pretrial
Order and Brief Conferences
with Plaintiff 7.5

March 30-April 1, 1974
Research and study of defendants'
Answers to Pretrial Order and briefs 18.0

April 2-7, 1974
Research, review of record, conferences
with Plaintiff, et al., requested subpoenas,
preparation for trial 48.5

April 8, 1974
Trial, conferences with Plaintiff, et al.,
following trial 15.5

May 1-10, 1974
Conference with Plaintiff relative to
the Opinion of the Court, review of the record,
research and discussion of the trial issues,

prospect on appeal, preparation of Notice of Appeal	90.0
June 25, 1974 Conference with Plaintiff, relative to Order Granting Extension of Time to File Record	2.0
August 8-20, 1974 Review of transcript and study of record, conferences with Plaintiff, et al.	34.5
September 14-October 24, 1974 Research, preparation of Brief on Appeal to U.S. Court of Appeals, Fifth Circuit	80.5
January 18-February 10, 1975 Research and review of issues of Defendants' Brief, conferences with Plaintiff, et al.	75.0
June 10, 1975 Conference with Plaintiff	2.0
September 21, 1975 Conference with Plaintiff	2.5
October , 1975 Travel to New Orleans, Court appearance, Argument before U.S. Court of Appeals, Fifth Circuit, conference with Plaintiff, et al.	10.0
December 7, 1975 Conference with Plaintiff, et al.	4.0
March 10, 1976 Conference with Plaintiff	2.0
March 20-27, 1976 Study and review of the Decision of the U.S. Court of Appeals, Fifth	

Circuit, dated March 11, 1976, reported at 528 F.2d 551; conferences with Plaintiff, et al. 24.5

June 18, 1976
Review of Defendants' Petition for Rehearing in U.S. Court of Appeals, Fifth Circuit, research and conferences with Plaintiff, et al. 4.0

June 30, 1976
Conference with Plaintiff, et al., discussed the Mandate issued by the U.S. Court of Appeal, Fifth Circuit, on June 25, 1976 3.5

August 14, 1976
Conference with Plaintiff, et al. discussion of the recall of the Mandate of June 25, 1976, issued by the U.S. Court of Appeals, Fifth Circuit 2.0

September 9, 1976
Review of Order of the District Court of September 7, 1976, fixing the action for Pretrial Conference on September 16, 1976, and ordering the parties to be prepared to discuss amicable disposition of the lawsuit and to enumerate the witnesses, exhibits and the material issues of fact in preparation to retry the case all over again; discussion of the Order with Plaintiff, et al,; contacted the Court and advised the Court that Counsel for Plaintiff was of the opinion that the referenced Order was inappropriate; and that, furthermore, the Defendants had served 'Notice' of applying for 'Writ of Certiorari' to the Supreme Court of the United States 3.5

October 6-30, 1976
Received "Petition for Writ of Certiorari" by the Defendants, Local 1830 and 1833, General Longshore Workers, International Longshoremen's Association, to the Supreme Court of the United States, reviewed, researched its issues, conferenced with Plaintiff relative thereto, conferred with other attorneys 45.5

November 20-December 6, 1976
Research and prepared Response to Petition for Writ of Certiorari by Defendants to the Supreme Court of the United States 30.5

January 22, 1977
Conference with Plaintiff, et al., relative to implementation of the mandate issued by the United States Court of Appeal, Fifth Circuit, after the Supreme Court of the United States had denied the Defendants' Application for 'Writ of Certiorari' 4.5

February 26, 1977
Conference with Plaintiff, relative to the Court's failure to take action on the mandate, and the steps we should take to bring about action and the desired result by the Court, discussions with other attorneys 8.0

March 12, 1977
Conference with Plaintiff, relative to brining the action before the Court on the issue of implementation of the U.S. Court of Appeals, Fifth Circuit 3.5

March 19-22, 1977
Conferences with Plaintiff, et al., relative to bringing the issue of implementation before the Court, prepared and filed 'Motion for Pretrial Conference' 10.0

March 29, 1977
Conference with Plaintiff, relative to the Order issued by the Court on the 'Motion for Pretrial Conference' relative to implementation of the Mandate issued by the United States Court of Appeals, Fifth Circuit 3.5

May 21-31, 1977
Conferences with Plaintiff, relative to getting the Court to implement the Mandate of the United States Court of Appeal, Fifth Circuit; Motions by the Defendants and discussions with other attorneys 15.5

July 2, 1977
Conference with Plaintiff, relative to Pretrial Notice issued by the Court, dated June 21, 1977, fixing Pretrial Conference for July 12, 1977 4.5

July 5-8, 1977
Research, conferences with Plaintiff, et al.; preparation of 'Joint Pretrial Order'; discussions with opposing counsel, filing of 'Joint Pretrial Order.' 18.5

July 12-16, 1977
Pretrial Conference; conference with Plaintiff et al.; study and discussion of 'Defendants' Motion for Relief Under Rule 60(b)(5) and (6)' 25.5

July 18-August 1, 1977
Research and preparation of Opposition and Memorandum to Defendants' Motion for Relief From Judgment Under Rule 60(b)(5) and (6) 55.0

September 12-December 22, 1977
Conferences with Plaintiff, et al., relative to the attitude of the Court in reference to

implementation of the Mandate of the United States Court of Appeals, Fifth Circuit	26.5
January 14-16, 1978 Conference with Plaintiff, et al.; preparation of Notice of Appeal and Bond for Costs on Appeal	4.5
January 17-18, 1978 Conference with Plaintiff, Preparation of Contents of Record and Statement of Issues on Appeal	15.5
February 6, 1978 Conference with Plaintiff; review of the Opinion of the Court and discussion of it with Plaintiff, et al.	3.5
March 27, 1978 Prepared Motion for Enlargement of Time to file Brief to the United States Court of Appeals, Fifth Circuit	3.0
May 8, 1978 Examined Appendix filed of record in the United States Court of Appeals, Fifth Circuit	2.0
May 21, 1978 Preparation of Second Motion for Enlargement of Time to File Brief with the United States Court of Appeals, Fifth Circuit	1.5
May 21-June 1, 1978 Research, conference with Plaintiff and other attorneys, preparation of Brief to United States Court of Appeals, Fifth Circuit, relative to this Court's appreciation of FRCP Rule 60(b)(5) and (6) and this Court's deviation from the Mandate issued	

by the United States Court of Appeals, Fifth Circuit	120.5
June 12-30, 1978 Review and research of the Brief of Equal Employment Opportunity Commission (EEOC), and discussion with Plaintiff and other attorneys	45.5
July 5-31, 1978 Review and research fo the Brief of defendants, Rogers Terminal & Shipping Corporation; Louisiana Stevedores, Inc.; Ramsay, Scarlett & Company, Inc., and Baton Rouge Marine Contractors, Inc.; and discussion with Plaintiff and with other attorneys	8.5
August 2-31, 1978 Review and research of the Brief of Local 1830 and Local 1833 filed with the United States Court of Appeals, Fifth Circuit, supporting this Court's action in its exercise of FCP Rule 60(5) and (6) and this Court's deviation from the Mandate issued by the United States Court of Appeals, Fifth Circuit; conferences with Plaintiff and with other attorneys	30.5
October 7, 1978 Conference with Plaintiff, et al. relative to the case on appeal	0.5
December 16, 1978 Conference with Plaintiff, relative to the case on appeal	2.0
March 24, 1979 Conference with Plaintiff, relative to the case pending on appeal	2.5

October 31-November 1, 1979
Received 'Notice of Argument' of case to be had in the United States Court of Appeals, Fifth Circuit, on December 5, 1979; execution of 'Acknowledgement of Notice' form; conference with Plaintiff, et al. 3.5

November 1-December 4, 1979
Review of the Briefs; reexamination of the research; more conferences with other attorneys and Plaintiff all in preparation of 'Oral Argument' before the United States Court of Appeals, Fifth Circuit, on the issues of this Court's exercise of FRCP Rule 60(b)(5) and (6) and this Court's deviation from the Mandate issued by the United States Court of Appeals, Fifth Circuit, subsequent to prior denial of Writ by the Supreme Court of the United States, which left the Opinion/Judgment and Mandate of the United States Court of Appeals, Fifth Circuit, in full force and effect 85.0

December 5, 1979
Round trip traveled from Baton Rouge to New Orleans for 'Oral Argument' in the United States Court of Appeals, Fifth Circuit; conferences with other attorneys and Plaintiff, et al. 15.5

March 28-29, 1980
Review of the Opinion/Judgment of the United States Court of Appeals, Fifth Circuit, which reversed the Decision of this Court on FRCP Rule 60(b)(5) and (6) and this Court's deviation from the Mandate issued by the United States Court of Appeals, Fifth Circuit, subsequent to prior denial of Writ by the Supreme Court of the United States, which in fact and law left the original Opinion/Judgment of the Court of Appeals, Fifth Circuit, in full force

and effect; and remanded the case to this Court for compliance with the Mandate of the United States Court of Appeals, Fifth Circuit, as originally issued by that Court; conferences with other attorneys and Plaintiff, et al. 3.5

April 21-26, 1980
Review and research of issues raised by Defendants' 'Petition for Rehearing,' filed in the United States Court of Appeals, Fifth Circuit, by the defendants, Local 1830 and Local 1833; conferences with Plaintiff, et al. 25.5

May 17, 1980
Conferences with Plaintiff, et al., relative to the denial of Defendants' 'Motion for Rehearing' by the United States Court of Appeals, Fifth Circuit 2.5

May 24, 1980
Conference with Plaintiff, et al., relative to the 'Motion for Recall and Stay of Mandate' by the defendants, Local 1830 and Local 1833, pending 'Application for Writ' to the Supreme Court of the United States 5.5

June 14, 1980
Conference with Plaintiff, et al., relative to the denial of the 'Motion for Recall and Stay of Mandate' of the defendants, Local 1830 and Local 1833 by the United States Court of Appeals, Fifth Circuit 6.0

August 11, 1980
Conference with Plaintiff, et al., relative to the Application of Local 1830 and Local 1833 to the Supreme Court of the United States for Extension of Time to File Certiorari; review of its contents and went over it with Plaintiff, et al., relative to its ramification and effect 3.5

October 23-November 1, 1980
Review, research and study of the 'Petition for Writ of Certiorari' by the defendants, Local 1830 and 1833 to the Supreme Court of the United States; and discussions and conferences with Plaintiff, et al. 12.5

December 11, 1980-January 13, 1981
Review and research of the 'Petition for Writ of Certiorari' by the defendants Locals 1830 and 1833, to the Supreme Court of the United States; and the Memoranda of Employers-Defendants-Respondents in Support of the Petition for Writ of Certiorari by the defendants, Locals 1830 and 1833 to the Supreme Court of the United States; conferences and discussions with Plaintiff, et al. 30.5

January 13-29, 1981
Research, conferences with Plaintiff, et al.; preparation of Brief on behalf of Plaintiff-Respondent, Alton J. Bailey, in opposition of the 'Petition for Writ of Certiorari' by the defendants, Locals 1830 and 1833, and other filings in the Supreme Court of the United States by the Employers-Defendants-Respondents 72.5

February 28, 1981
Conference with Plaintiff, et al., relative to case pending in the Supreme Court of the United States 2.0

March 7, 1981
Conference with Plaintiff, et al., relative to disposition made of the 'Petition for Writ of Certiorari' and other filings in the Supreme Court of the United States by the Defendants and the ramification and effect resultant of that disposition made by the Supreme Court of the United States 5.5

April 25, 1981
Conference with Plaintiff, et al., relative to 'Notice,' by this Court, of April 21, 1981, advising that the case was on the 'Call Docket' to be dismissed by this Court, for inaction fo prosecution for more than six (6) months unless 'good cause' by Plaintiff be shown 3.5

May 26, 1981
Court Appearance; conference with Plaintiff, et al. 4.5

June 5, 1981
Preparation and filing of Motion for Instant Status Conference; and conference with Plaintiff, et al. 4.5

June 18, 1981
Review of Opposition to Motion of Plaintiff for Instant Status Conference, filed by the Defendants; conference with Plaintiff 2.0

June 23-24, 1981
Review and study of the 'Proposed Schedule for Merger' submitted and filed in this Court by the Defendants; conferences and discussions of the proposed Merger Plan with Plaintiff, et al. 8.0

June 27-July 2, 1981
Conference with Plaintiff, et al., preparation and filing of 'Opposition to Proposed Schedule of Merger' 12.5

July 21, 1981
Appearance at Status Conference; conference with Plaintiff et al. 4.5

July 22, 1981
Conference with Plaintiff, et al.; preparation and filing of 'Motion for Instant Status Conference' 6.0

July 30-August 7, 1981
Conference with Plaintiff, et al.; research,

preparation of 'Application for Writ of Mandamus'; round trip from Baton Rouge to New Orleans for filing of the application for Writ of Mandamus with the United States District Court, Fifth Circuit 70.9

September 28, 1981
Review of Defendants' Motion for Extension of Time to Serve Proposed Merger Plan, Constitution, and Bylaws'; conference with Plaintiff, et al.; and preparation of 'Objection to Defendants' Motion for Extension of Time to Serve Proposed Merger Plan, Constitution, and Bylaws' 3.2

October 2-9, 1981
Review and study of the Defendants' Proposed Merger Plan and Interim Constitution and Bylaws for Merger of Locals 1830 and 1833; conference with Plaintiff, et al., and preparation and filing of 'Motion for Instant Status Conference on Merger Plan' 27.5

October 12, 1981
Conference with Plaintiff, et al., relative to individual members of Locals 1830 and 1833 joining in and executing a 'joint-objection' to the Defendants' Merger Plan 3.5

October 28, 1981
Review and study of Defendants' Response to Plaintiff's Motion for Instant Status Conference scheduled for hearing on October 29, 1981 2.5

October 29, 1981
Appearance for Status Conference; conference with Plaintiff, et al. 3.5

November 16-December 7, 1981
Study and review of Defendants' Motion for Approval of Proposed Merger Plan and Interim Constitution and Bylaws for the Merger of Locals 1830 and 1833; conferences

with Plaintiff, et al.; review of the entire record applicable thereto; preparation of Opposition and/or Objection to the Defendants' Motion for Approval fo Proposed Merger Plan and Interim Constitution and Bylaws for the Merger of Locals 1830 and 1833 under their plan as presented 27.4

December 16, 1981
Study and review of Defendants' Reply to Plaintiff's Objection to Proposed Merger Plan and the Election of Officers in accordance with the Defendants' Plan; conference with Plaintiff, et al. 2.5

December 17, 1981
Study and review of all applicable filings, motions, objections, oppositions and replies; conference with Plaintiff, et al.; made preparation for the following-day Court appearance 4.5

December 18, 1981
Court Appearance, hearing had on Defendants' Motion for Approval of Merger Plan; and conferences with Plaintiff, et al. 11.5

December 29, 1981
Conference with Plaintiff, et al., relative to the Court's Judgment/Ruling of December 21, 1981, which overruled Plaintiff's Objection and approved Defendants' Proposed Merger Plan and Interim Constitution and Bylaws for Merger of Local 1830 and Local 1833 3.5

January 25-February 1, 1982
Conference with Plaintiff; Research and Preparation of 'Writ of Mandamus' and filing by mailing to the United States Court of Appeals, Fifth Circuit 45.2

February 13, 1982
Conference with Plaintiff, et al., relative to the denial of Plaintiff's Petition for

Writ of Mandamus by the United States Court of Appeals, Fifth Circuit 2.5

May 22, 1982
Conference with Plaintiff, et al., relative to Defendants' Motion for Extension of Time for Adoption of New Constitution and Bylaws for the merged Local 3033, General Longshore Workers, International Longshoremen's Association, AFL–CIO (formed out of Locals 1830 and 1833) 2.5

June 7-8, 1982
Review of motion, research of issues raised by the motion, conference with Plaintiff, et al., relative to the motion and prepared and filed Opposition to Defendants' Motion for Extension of Time for Adoption of Constitution for The Court-ordered Merged Union, Local 3033, General Longshore Workers, I.L.A., AFL–CIO 9.1

June 18, 1982
Court Appearance, hearing on Defendants' Motion for Extension of Time for Adoption of Constitution for the Court-ordered Merged Union, Local 3033, General, Longshore Workers, I.L.A., AFL–CIO 2.7

July 16-30, 1982
Study and review of Defendants' Motion for Approval of Hiring Plan; conference with Plaintiff, et al.; research and preparation in anticipation of and preparing and filing Opposition to Defendants' Motion for Approval of Hiring Plan submitted and filed by the Defendants 10.1

August 28-September 20, 1982
Conference with Plaintiff, et al., research, drafted and filed Constitution and Bylaws and Motion for the Proposed Constitution and Bylaws of General Longshore Workers,

I.L.A., AFL–CIO, Port Allen, Louisiana, submitted by the Plaintiff, Alton J. Bailey, to be Decreed the Constitution and Bylaws of Local Union 3033, under 'Step 2' of the Merger Plan; Memorandum, Notice of Motion, and Motion for Oral Evidence, accompanying	60.0
September 22, 1982 Conference with Plaintiff, et al., preparation of and filing of Motion for an Ex Parte Order to Enjoin the Officers and Members of Local 3033 from Holding the Special Election Called for Wednesday, September 29, 1982, as Being in Violation of This Court's Order Issued June 18, 1982	5.5
November 13, 1982 Conference with Plaintiff, et al., relative to the Court continuing oral argument on Plaintiff's Motion for the Adoption of Plaintiff's Proposed Constitution and Bylaws to be Decreed the Constitution and Bylaws of Local Union 3033, General Longshore Workers, International Longshoremen's Association, AFL–CIO, under 'Step 2' of the Merger Plan	3.5
November 19, 1982 Court Appearance; conference with Plaintiff, et al.	5.0
February 22, 1971-to date, inclusively Accompaniments	75.0
January 3, 1983-to date, inclusively Preparation of this 'Motion for Attorney's fees', and the accompanying affidavits	180.0
TOTAL HOURS	2001.9

II. OUT-OF-POCKET COSTS AND EXPENSES:

March 11, 1971 Clerk of Court-Filing fees	$0,015.00
May 16-17, 1974 Appeal costs and copies	10.00
October 24, 1974 Franklin Press-Printing of Brief	222.60
January 16, 1978 Clerk of Court-Appeal costs	5.00
February 17, 1978 Clerk of Court, USCA/5 Docketing fee	50.00
March 16, 1978 Scofields' Quality Printers, Inc. Reproduction of the Appendix	92.44
June 1, 1978 Instant Print Centers, Inc. Printing of Brief-Mailing	88.43
January 29-February 11, 1981 Ortlieb Press, Inc. Printing of Brief-Supreme Court of the United States-Mailing	1,234.04
June 4, 1981 Clerk of Court-copies	2.00
July 10, 1981 Clerk of Court-copies	26.00
July 31, 1981 Clerk of Court-copies	0.50
August 7, 1981 Clerk of Court, USCA/5 Docketing fee	65.00

February 2, 1982 Clerk of Court, USCA/5 Docketing fee-Mailing	76.91
February 22, 1971-to date, inclusively Accompaniments	1,750.00
TOTAL OUT-OF-POCKET COSTS AND EXPENSES	$3,637.92

III. FURTHER CONSIDERATION:

Appearer/Affiant, JOHNNIE A. JONES, further deposes that he was admitted to the practice of law in Louisiana on June 11, 1953; that he has been engaged in Civil Rights Litigations of all types since that time, including employment discrimination and related Civil Rights Litigation; that in light of the results of this case, plaintiff, ALTON J. BAILEY, in this Civil Rights Action and Complex Litigation, has received all remedies sought by him resultant of the experience and expertise of Appearer/Affiant in the area; that, therefore, appearer/affiant, JOHNNIE A. JONES, is suggesting that the Court award him a fee of One Hundred Fifty and No/100 Dollars ($150.00) per hour for all the time he has spent on the case as detailed in Part I above; and that the Court order the reimbursement of all out-of-pocket costs and expenses be paid as detailed in Part II above.

/s/ Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 14 day of June, 1983.

22–U

/s/ Leo J. D'Aubin
NOTARY PUBLIC

APPENDIX "V"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

MEMORANDUM OF AUTHORITY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

MAY IT PLEASE THE COURT:

The following cases are submitted on behalf of plaintiff-movant, ALTON J. BAILEY, as being supportive of his 'Motion for Attorney's Fees,' to-wit:

Perez v. Rodriguez Bou (1978) 575 F. 2d 21

Gore v. Truner, 563 F. 2d 159

Johnson v. Georgia Highway Express, 488 F. 2d 714

Cruz v. Beto, 453 F. Supp. 905

Alyeska Pipeline Service Co. v. Wilderness Society (1975) 421 U.S. 240

Hensley v. Eckerhart (may 16, 1983) U.S. , S.Ct. , L. Ed. 2d

Respectfully submitted,

Attorneys for Plaintiff-Movant:
JONES & JONES

DATED: June 14, 1983

/s/ Johnnie A. Jones
JOHNNIE A. JONES,
Trial Attorney
Taylor Building, Suite 215
251 Florida St.
Baton Rouge, LA 70801
Telephone: 504/383-8573

APPENDIX "W"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC, (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

--------RICHARD C. CADWALLADER--------,

who, upon Oath, did depose and say:

That, since the year 1938, he has been engaged in the private practice of law in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

That he is admitted to practice before the United States District Court for the Middle District of Louisiana; and that he has reviewed the 'Affidavit of Attorney in Support of Motion for Attorney's Fees' submitted by Johnnie A. Jones in connection with the above-captioned action. Considering the experience, degree of expertise, creativity and novelty reflected thereon, the number of hours devoted to the prosecution of this cause, and the fact that the receipt of attorney's fees was contingent upon a successful conclusion to the lawsuit—the Plaintiff as the prevailing party—the amount the Court is requested to award, namely: $150.00 per hour for Johnnie A. Jones is fair and reasonable when taken into consideration that on March 11, 1971, when the original complaint was filed in this action, the filing fee was $15.00, as compared with today's filing fee of $60.00.

/s/ Richard C. Cadwallader
RICHARD C. CADWALLADER

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 28th day of September, 1983.

/s/ Jonathan C. Harris
NOTARY PUBLIC

APPENDIX "X"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

----------ARTHUR COBB----------,

who, upon Oath, did depose and say:

That he has been engaged in the private practice of law in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, since June 10, 1955. That he has been admitted to practice before the United States District Court for the Middle District of Louisiana, and he is familiar with civil rights litigation in this district.

Affiant further declared that he ha reviewed the 'Affidavit of Attorney in Support of Motion for Attorney's Fees' submitted by Johnnie A. Jones in connection with the above-captioned action. Considering the experience, degree of expertise, creativity and novelty reflected thereon, the number of hours devoted to the prosecution of this case and the fact that the receipt of attorney's fees was contingent upon a successful conclusion to the lawsuit—and the Plaintiff as the 'prevailing party'—the amount that the Court is requested to award, namely: $150.00 per hour for Johnnie A. Jones, is fair and reasonable, based on today's value of the dollar.

/s/ Arthur Cobb
ARTHUR COBB

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 26th day of September, 1983.

/s/
NOTARY PUBLIC

APPENDIX "Y"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

----------JOSEPH A. GLADNEY----------,

who, upon Oath, did depose and say:

That he w as admitted to Louisiana Bar on July 12, 1935; but received his Law Degree in 1936; and that, except for his tenure in the military, he has been engaged in the private practice of law before the Courts of the State of Louisiana, the United States District Court for the Middle District of Louisiana, the United States Court of Appeals, Fifth Circuit, and the Supreme Court of the State of Louisiana, and the Supreme Court of the United States.

Affiant further declared that his practice is largely consisted of litigation of all types, including civil rights litigation; and that he believes that he has acquired and/or developed a certain degree of expertise in the area of prosecuting civil rights litigation.

Affiant further declared that he has reviewed the 'Affidavit of Attorney in Support of Motion for Attorney's Fees' submitted By Johnnie A. Jones in connection with the above-captioned action. Considering the experience, the degree of expertise, creativity and novelty reflected thereon, the number of hours devoted to the prosecution of this case and the fact that the receipt of attorney's fees was contingent upon a successful conclusion of the law-suit—and the Plaintiff as the 'prevailing party'—the amount that the Court is requested to award, namely: $150.00 per hour for Johnnie A. Jones, is fair and reasonable, based on today's value of the dollar.

/s/ Joseph A. Gladney
JOSEPH A. GLADNEY

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 26th day of September, 1983.

/s/_____
NOTARY PUBLIC

APPENDIX "Z"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of Orleans, State of Louisiana,

PERSONALLY CAME AND APPEARED:

----------WILLIAM F. WESSEL----------,

who, upon Oath, did depose and say:

That he was admitted to Louisiana Bar in 1963. That he is admitted to practice before the Courts of the State of Louisiana, in the United State Court of Appeals, Fifth Circuit, and Louisiana Supreme Court and the Supreme Court of the United States.

Affiant further declared that his practice is largely consisted of litigation of all types, including employment discrimination and related civil rights litigation; and believes that he has developed a degree of expertise in this area; and that he regularly bill non-contingent clients at the rate of $100.00 – $200.00 per hour.

Affiant further declared that he has reviewed the 'Affidavit of Attorney in Support of Motion for Attorney's Fees' submitted by Johnnie A. Jones in connection with the above-captioned action. Considering the experience, degree of expertise, creativity and novelty reflected thereon, the number of hours devoted to the prosecution of this case and the fact that the receipt of attorney's fees was contingent upon a successful conclusion to the lawsuit—and the Plaintiff as the 'prevailing party'—the amount that the Court is requested to award, namely: $150.00 per hour for Johnnie A. Jones, is fair and reasonable, based on today's value of the dollar.

/s/ William F. Wessel
WILLIAM F. WESSEL

SWORN TO AND SUBSCRIBED, before me, in the City of New Orleans, Parish of Orleans, State of Louisiana, on this 27th day of September, 1983.

/s/_____
NOTARY PUBLIC

APPENDIX "AA"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

----------JOSEPH F. KEOGH----------,

who, upon Oath, did depose and say:

That he was admitted to Louisiana Bar in September, 1955. That he is admitted to practice before the Courts of the State of Louisiana, the United State District Court for the Middle District of Louisiana, the Untied States Court of Appeals, Fifth Circuit, the Supreme Court of the State of Louisiana, and the Supreme Court of the United States.

Affiant further declared that, having been the parish Attorney for the City-Parish Government, the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, his practice has been largely consisted of litigation of all types, including employment discrimination and related civil rights litigation; and believes that he has developed a degree of expertise in this area; and that he does not consider attorney's fees at the rate of $150.00 per hour in such litigations to be excessive under the facts and circumstances reflected upon a review of the 'Affidavit of Attorney in Support of Motion for Attorney's Fees' submitted by Johnnie A. Jones in connection with the above-captioned action—especially, after taking into consideration the experience of Johnnie A. Jones, his degree of expertise, creativity and novelty reflected thereon, the number of hours devoted to the prosecution of this case and the fact that the receipt of attorney's fees was contingent upon his client prevailing in the lawsuit—the amount the Court is requested to award, namely: $150.00 per hour for Johnnie A. Jones, is fair and reasonable; and

more especially, when compared with the $15.00 filing fee on March 11, 1971, which was paid to the Clerk of Court to file the original complaint in this action, and a filing fee of $60.00 it would cost today to file that very same complaint with the Clerk of Court of the United States District Court for the Middle District of Louisiana, the Court in which this action originated.

/s/ Joseph F. Keogh
JOSEPH F. KEOGH

SWORN TO AND SUBSCRIBED, before me, at Baton Rouge, Louisiana, this 26th day of September, 1983.

/s/_____
NOTARY PUBLIC

APPENDIX "BB"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

ALTON J. BAILEY
Plaintiff

versus

RYAN STEVEDORING COMPANY, INC., (2) ROGERS TERMINAL AND SHIPPING CORPORATION, (3) LOUISIANA STEVEDORES, INC., (4) RAMSAY, SCARLETT AND COMPANY, INC., (5) BATON ROUGE MARINE CONTRACTORS, INC., and (6) LOCAL 1830 and LOCAL 1833, GENERAL LONGSHORE WORKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL–CIO,
Defendants

CIVIL ACTION

NUMBER: 71-79

SECTION 'B'

MOTION FOR AN EARLY AND EXPEDITED TRIAL

NOW INTO COURT, through is undersigned counsel of record, and pursuant to Rule 7(b)(1) of the Federal Rules of Civil Procedure, and Rule 5H of the Local General Rules of this Court, comes the plaintiff, ALTON J. BAILEY, and moves the Court to assign the case for trial on Plaintiff's 'Motion for Attorney's Fees, Costs and Expenses' at the earliest practicable date and to cause the case to be in every way expedited.

Plaintiff submits, particularly, but not exclusively, the following reasons why the trial on Plaintiff's 'Motion for Attorney's Fees, Costs and Expenses' should be tried at the earliest practicable date and for the trial thereof be in every way expedited, to-wit:

1. The Original Complaint was filed herein on March 11, 1971.

2. Trial on the merits was had on April 8, 1974.

3. Judgment on the merits was rendered, adversely to Plaintiff, by the District Court on April 23, 1974.

4. Appeal Notice was timely filed by Plaintiff on May 10, 1974.

5. United States Court of Appeals, Fifth Circuit, REVERSED the District COURT on June 25, 1976.

6. Mandate was issued by the United States Court of Appeals, Fifth Circuit—Judgment of District Court REVERSED and REMANDED, January 19, 1977.

7. Motion for Relief From Judgment, Under Rule 60(b)(5) and (6), filed by the Defendants on July 12, 1977.

8. Judgment by the District Court, in favor of the Defendants, on the Defendants' "Motion for Relief From Judgment Under Rule 60(b)(5) and (6)," dated December 29, 1977.

9. Appeal Notice timely filed by Plaintiff on January 16, 1978.

10. Mandate issued by the Court of Appeals, Fifth Circuit, the Judgment of the District Court was REVERSED and REMANDED; and the Defendants' "Motion for Relief From Judgment Under Rule 60(b)(5) and (6)" was thereby rejected on May 21, 1980.

11. Implementation of the Mandate issued by the Court of Appeals, Fifth Circuit, on June 25, 1976, was not ordered by the District Court prior to November 19, 1982.

12. Plaintiff's 'Motion for Attorney's Fees, Costs and Expenses' was filed on June 14, 1983.

13. On July 6, 1983, following a Status/Pretrial Conference of June 29, 1983, the District Court, by 'Minute Entry,' ordered:

    a) Pretrial Order to be filed on or before October 5, 1983—which was timely prepared by Plaintiff and filed timely as ordered by the Court.

    b) Pretrial Conference on October 7, 1983, at 2:00 o'clock P.M.—which was duly

held with Plaintiff's counsel of record present in personal appearance in respectful obedience of his understanding of the said Court Order of July 6, 1983.

c) Trial, without jury, on Plaintiff's "Motion for Attorney's Fees, Costs and Expenses," was assigned for October 27, 1983; but, however,

d) On October 7, 1983, per 'Minute Entry' of that date, the Court ordered that the trial on Plaintiff's "Motion for Attorney's Fees, Costs and Expenses," scheduled/assigned for Thursday, October 27, 1983, at 2:00 p.m., be "continued *without date*." (Italics added for emphasis.)

14. Since the filing of the Original Complaint in this action on March 11, 1971, this action has run the full gamut of the [C]ourts twice, with the Defendants' "Applications for Writs of Certiorari" being twice denied by the Supreme Court of the United States.

WHEREFORE, plaintiff-Movant, ALTON J. BAILEY, prays that this, his 'Motion for an Early and Expedited Trial,' be maintained; and that the trial on the merits on his 'Motion for Attorney's Fees, Costs and Expenses,' filed herein on June 14, 1983, be assigned and held at the earliest practicable date and the trial thereof be in every way expedited.

Further, the plaintiff-movant, ALTON J. BAILEY, prays that this, his 'Motion for an Early and Expedited Trial,' be maintained; and that the trial on the merits of his 'Motion for Attorney's Fees, Costs and Expenses,' filed herein on June 14, 1983, be assigned and held at the

earliest practicable date and the trial thereof be in every way expedited.

Further, the plaintiff-movant, ALTON J. BAILEY, prays for all necessary orders, general and equitable relief as the nature of the premises hereof permitting.

Respectfully submitted,

Attorneys for Plaintiff-Movant:
JONES & JONES

DATED: October 21, 1983

/s/ Johnnie A. Jones
JOHNNIE A. JONES,
Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, LA 70801
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This case is on the trial request docket.

s/Frank J. Polozola
U.S. District Judge
Oct. 25, 1983

Supreme Court, U.S.
FILED
JUN 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NUMBER 86-1607

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

ALTON J. BAILEY, *Petitioner*

versus

RYAN STEVEDORING COMPANY, INC., ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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apl

QUESTION PRESENTED

Was the court of appeals correct in holding that the plaintiff was not a "prevailing party" as to the stevedoring companies within the meaning of Section 706 (k) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5 (k), and accordingly dismissing the plaintiff's claims against them for attorney's fees?

TABLE OF CONTENTS

Question Presented i

Table of Contents iii

Table of Authorities iv

Statement of the Case 1

Summary of Argument 2

Argument 3

Conclusion 4

Certificate of Service 5

TABLE OF AUTHORITIES

Bailey v. Ryan Stevedoring Co., Inc.
528 F. 2d 551 (5th Cir. 1976) 2

Local 1830, ILA v. Bailey, 429 U.S.
1052 (1977) 2

NUMBER 86-1607

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

ALTON J. BAILEY, *Petitioner*

versus

RYAN STEVEDORING COMPANY, INC.;
ROGERS TERMINAL AND SHIPPING CORPORATION;
LOUISIANA STEVEDORES, INC.;
RAMSAY, SCARLETT AND COMPANY, INC.;
BATON ROUGE MARINE CONTRACTORS, INC.;
AND LOCAL 1830 AND LOCAL 1833,
GENERAL LONGSHORE WORKERS,
INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondents

BRIEF OF ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC. AND BATON ROUGE MARINE CONTRACTORS, INC.

STATEMENT OF THE CASE

The plaintiffs complaint alleged a violation of Title VII of the Civil Rights Act of 1964 by two local unions of the ILA and

five stevedoring companies. The action was originally brought as a class action. The plaintiff also asserted individual claims.

The district court denied class action treatment. It also dismissed the plaintiff's individual claims against the stevedoring companies after trial. The district court's decision in those two respects was affirmed by the court of appeals on March 11, 1976. *Bailey v. Ryan Stevedoring Co., Inc.*, 528 F.2d 551 (5th Cir. 1976). The Supreme Court denied certiorari on January 10, 1977. *Local 1830, ILA v. Bailey*, 429 U.S. 1052 (1977). The case against the stevedoring companies was essentially over at that point.

The court of appeals' decision also directed the district court to issue a permanent injunction against the continued operation of segregated local unions. The remainder of the litigation related to the consolidation of the local unions.

On June 14, 1983, the plaintiff filed a motion for attorney's fees. On June 27, 1983, the four stevedoring companies on whose behalf this brief is filed moved to dismiss the attorney's fees claim against them. The district court granted the motion on July 19, 1984, for reasons to be assigned at the conclusion of the case. On July 8, 1986, the district court assigned its reasons. See Petition for Writ of Certiorari, appendix I.

The court of appeals affirmed.

SUMMARY OF ARGUMENT

The courts below correctly denied the plaintiff's claim for attorney's fees against the stevedoring companies on the ground that the plaintiff was not a "prevailing party" as to those defendants. No relief whatsoever was granted against the stevedoring companies. The only relief granted was an order prohibiting the continued operation of the segregated local

unions. The plaintiff lost his individual claim of discrimination and his attempt to maintain a class action. The plaintiff was not a "prevailing party" as to the stevedoring companies and is therefore not entitled to recover his attorney's fees from them.

As to the claims against the stevedoring companies, therefore, the case presents neither a conflict with the decision of another court of appeals nor an important question of federal law that has not yet been settled by this Court.

The union's position will be discussed in the union's brief.

ARGUMENT

The relevant statutory provision is Section 706(k) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(k), which reads as follows:

> In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

In its July 8, 1986, opinion the district court explained its reasons for dismissing the attorneys' fees claim against the stevedoring companies:

> Named as defendants in the original suit were the unions and several stevedoring companies. This court previously found that the stevedoring companies were not liable for attorney's fees since they had nothing to do with the operation of the unions and had no voice in determining whether there should be a merger of the unions. Furthermore, these companies were not guilty of any discrimination against the plaintiff or the union. Thus, these companies cannot be required to pay attorney's fees

to the plaintiff whether plaintiff is a prevailing party or not.

The court of appeals affirmed.

The plaintiff lost his case against the stevedoring companies. Class action treatment was denied, and his individual claims against the stevedoring companies were dismissed. He obtained no relief of any kind against the stevedoring companies. The only relief that was granted was an order merging the local unions. The stevedoring companies, of course, had nothing to do with the organizational structure of the unions. The order requiring merger of the local unions did not constitute a finding of a violation of Title VII on the part of the stevedoring companies, nor the grant of any relief against the stevedoring companies. The plaintiff was simply not a "prevailing party" as to the stevedoring companies.

The courts below also held that the plaintiff was not a prevailing party as to the unions. Whatever the outcome of that issue, it has no bearing on the stevedoring companies. Attorneys' fees cannot be imposed on a prevailing defendant even if relief is granted against another defendant.

CONCLUSION

The petition for a writ of certiorari with respect to the claims against the stevedoring companies should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been mailed, postage pre-paid, to:

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Mathews, Atkinson, Guglielmo,
Marks & Day
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Baton Rouge, LA 70821-3177

Baton Rouge, Louisiana, this 12 day of June, 1987.

William R. D'Armond

William R. D'Armond

(3)

NO. 86-1607

Supreme Court, U.S.
FILED
JUN 19 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL,

Respondents

On Petition for a Writ of Certiorari
to the United States Court
of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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18 pp

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO, certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

Alton J. Bailey
Johnnie A. Jones, Esq.
Ryan-Walsh Stevedoring Company, Inc.
Mathews, Atkinson, Guglielmo, Marks & Day
Rogers Terminal and Shipping Corporation
Gardner, Robein & Healey
Louisiana Stevedores, Inc.
Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman
Ramsay, Scarlett and Company, Inc.
Baton Rouge Marine Contractors, Inc.
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO
Baton Rouge Steamship Association

RESPECTFULLY SUBMITTED,

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TABLE OF CONTENTS

PAGE

Certificate of Interested Parties.....i
Table of Contents.....ii
Table of Authorities.....iii
Summary of Argument.....1
Argument.....2
Conclusion.....12
Certificate of Service.....13

TABLE OF AUTHORITIES

CASES: Page

Abraham v. Pekarski, 728 F.2d 167, 175 (3rd Cir. 1984).....6

Alyeska Pipeline Service Company v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612 44 L.Ed.2d 141 (1975).....3

Bailey v. Ryan Stevedoring Company. Inc., 528 F.2d 551, 557 (5th Cir. 1976).....4,7,8,9,10,11

Bonnes v. Long, 559 F.2d 1316 (4th Cir. 1979).....6

Chastang v. Flynn & Emrich Co., 541 F.2d 1040 (4th Cir. 1976).....9

Christianburg Garment Co., v. E.E.O.C., 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed. 648 (1978).....3

Commonwealth Oil Refining Co. v. E.E.O.C., 720 F.2d 1383, 1385 (5th Cir. 1983).....15

Gingras v. Lloyd, 740 F.2d 210, 212 (2nd Cir. 1984).....6

Hanrahan v. Hampton, 466 U.S. 754 100 S.Ct. 1987 64 L.Ed.2d 670.....3

Harrington v. Vandolia-Butler Board of Education, 585 F.2d 192 (6th Cir. 1978).....7

Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 1941, 76 L.Ed.2d 40 (1983).....4,5,11

Iranian Student's Association v. Edwards, 604 F.2d 352, 353 (5th Cir. 1979).....5

Joseph L. v Office of Judicial Support, 638 F. Supp. 833 (E.D.Pa. 1986).....10

Kentucky Association for Retarded Citizens v. Conn, 718 F.2d 182 (6th Cir. 1983).....7

TABLE OF AUTHORITIES (continued)

CASES: Page

Kentucky v. Graham, -U.S.- 105 S.Ct. 3099, 3105 ftn. 9, (1985).....12

Nadeau v. Helgemoe, 581 F.2d 275, 278, 279 (1st Cir. 1978).....5,6

Naprstek v. City of Norwich, 433 F.Supp. 1369, 1370 (N.D.N.Y. 1977).....11

Newman v. Piggie Park Enterprises, 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968).....3,9

New York Gaslight Club, Inc., v. Carey, 447 U.S. 54, 68, 700 S.Ct. 2024, 2033, 64 L.Ed.2d 723 (1980).....11

Ross v. Horn, 598 F.2d 1312, 1322 (3rd Cir. 1979).....6

Staten v. Housing Authority of the City of Pittsburgh, 638 F.2d 599 (3rd Cir. 1980).....10

Uviedo v. Steve's Sash & Door Company, 753 F.2d 369, (5th Cir. 1984).....5

Uviedo v. Steve's Sash & Door Company, -U.S.- 106 S.Ct. 791 (1986).....5,12

Williams v. New Orleans Steamship Association, 466 F.Supp. 662, 680 (E.D.La. 1979).....9

Statutes

Civil Rights Act of 1964, 706(k) of Title VII, 42 U.S.C. 2000e-5(k).....1,2,3,7

42 U.S.C. §1988.....3

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. 86-1607

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL,

Respondents

On Petition for a Writ of Certiorari
to the United States Court
of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

There is no necessity for this Court to grant a Writ of Certiorari in this case. Having failed to prove a single one of his claims of discrimination, Petitioner was properly found not to be the "prevailing party" by both the District Court and the United States Court of Appeals, Fifth Circuit, and he is, therefore, not entitled to an award of attorney's fees under 42 U.S.C. 2000 e-5 (k).

In addition, the facts of this case evidence the existence of special circumstances which justified the lower courts' denial of an attorney's fee award to Petitioner.

The mandate which issued from the Court of Appeals ordering the merger of ILA Local Unions 1830 and 1833 issued in the course of this matter as a result of a *sua sponte* finding of the Court. This merger order was an expansion of the law, legally unanticipated by either of the merged local Unions. There being no culpable action or inaction by the Respondent Local Unions, the imposition of an award of attorney's fees against their members would be unjust.

On the basis of the demonstrated special circumstances of this case, the District Court properly exercised the discretion granted to it in denying an award of attorney's fees to Petitioner.

ARGUMENT

The lower courts' denial of an award of attorney's fees to Petitioner Alton J. Bailey for his failed attempt to prove racial discrimination on the part of several Baton Rouge, Louisiana, stevedoring companies and Local Unions 1830 and 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO, Respondents herein, is consistent with the standards governing attorney's fee awards enunciated or approved by this Court, and presents no issue of a gravity warranting the granting of a writ of certiorari.

Petitioner seeks over $300,000.00 in attorney's fees for the prosecution of a race discrimination suit against the Respondents in which Petitioner lost on every claim he advanced. By any measure, he was not the "prevailing party", and his claim for fees was properly denied.

Bailey's claim is predicated on Section 706(k) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(k), which provides in pertinent part as follows:

> In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party. . . a reasonable attorney's fee as part of the costs.

This provision is one of the limited exceptions to the "American Rule" that litigants must pay their own attorney's fees.[1] *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 95 S.Ct. 1612 44 L.Ed.2d 141 (1975).

In interpreting a similar fee award statute in Title II of the Civil Rights Act of 1964, this Court held that a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust. *Newman v. Piggie Park Enterprises,* 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968). This standard is applicable to fee award claims under §706(k) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(k). *Christianburg Garment Co. v. E.E.O.C.,* 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed. 2d 648 (1978).

A. Petitioner is not the prevailing party.

In order to succeed in his fee award claim, Petitioner must demonstrate that he is the "prevailing party". The central allegation of Petitioner's Complaint, the core of this controversy, was the allegation of actual racial discrimination against Petitioner and similarly situated persons in the employment practices of the defendant stevedoring companies. Paragraph VI, Complaint of Alton J. Bailey, Petition for Writ of Certiorari, page 7-0. The defendant Local Unions were alleged to be racially segregated organizations and parties to a collective bargaining

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[1] Another exception is 42 U.S.C. §1988. It also allows attorney's fees to prevailing parties and cases interpreting §1988 can be applied to §706(k). See *Hanrahan v. Hampton,* 446 U.S. 754, 100 S.Ct. 1987 64 L.Ed.2d 670 (1980).

agreement which divided stevedoring jobs on a 50/50 basis between the Unions, thus furthering the discrimination of which Petitioner complained. *Ibidem.*

The District Court found, and the Court of Appeals, Fifth Circuit, affirmed, that the Petitioner did not prove his allegations of actual racial discrimination. However, the Fifth Circuit ordered the merger of the separate local unions on grounds that their continued separate existence presented "a threat of employment discrimination". *Bailey v. Ryan Stevedoring Company, Inc.*, 528 F.2d 551, 556, 557 (5th Cir. 1976).

The merger was not requested by the Petitioner in his Complaint. Instead, his prayer requested, in part, injunctive relief against the local unions' "continuing to maintain racially segregated organizations". Prayer, Paragraph 2, Complaint of Alton J. Bailey, Petition for Writ of Certiorari, page 11-0. The insinuation that these local Unions were racially separated as a matter of Union policy was given the lie by 204 of the approximately 230 members of Local 1830, the "Black" local, who, in opting-out of Bailey's class, averred that they understood that membership in the "White" local was available to them on request. *Bailey v. Ryan Stevedoring Company, Inc.*, 528 F.2d 551, 553 (5th Cir. 1976).

The very Court which ordered the merger held that its order was insufficient grounds to classify the Petitioner as the "Prevailing Party" for purposes of awarding attorney's fees. *Bailey v. Ryan Stevedoring Company, Inc.*, United States Court of Appeals, Fifth Circuit, No. 86-3604, Petition for Writ of Certiorari, Appendix "A".

As this Court noted in *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed. 2d 40 (1983), the term "prevailing party" has been defined in various ways.

The Fifth Circuit Court of Appeals has consistently employed a test which asks whether the plaintiff "has been successful on *the central issue*. . .as exhibited by the fact that he has acquired the *primary relief sought*." *Commonwealth Oil Refining Company v. E.E.O.C.*, 720 F.2d 1383, 1385 (5th Cir. 1983), quoting *Iranian Student's Association, v. Edwards*, 604 F.2d 352, 353 (5th Cir. 1979). (emphasis in original).

> While it may not lend itself easily to further articulation, this single test provides a common sense, pratical yardstick of success. In many, if not most lawsuits, whether tried or settled, it is possible to compare the allegations made with the results obtained and pick out a winner: A plaintiff who carried the day on his major claim, a defendant who defeated the major thrust of the suit. In other cases it may be that neither party could fairly be said to have carried the day, and in such event there should be no fee award to either.

Commonwealth Oil, supra, at 1385, 1386.

The Fifth Circuit refined and reaffirmed the "central issue" test in *Uviedo v. Steves Sash and Door Co.*, 753 F.2d 369 (5th Cir. 1985), holding that consistency with *Hensley, supra*, required that the central issue test be applied to each "unrelated claim" standing alone. This Court denied a Petition for Writ of Certiorari in the matter. *Uviedo v. Steves Sash & Door Company*, -U.S.- 106 S.Ct. 791 (1986).

The central issue test is, admittedly, not as "generous" a standard as that employed in some of the other Circuit Courts, which ask whether the plaintiff succeeded on "any significant issue". *See, e.g., Nadeau v. Helgemoe*, 581 F.2d 275, 278 (1st Cir. 1978).

But, even in those Circuits which utilize the "any

significant issue" tests, the primary focus is on whether the relief sought by the plaintiff was, in fact, obtained. Petitioner fails to meet this standard.

For example, the Third Circuit has effected the "prevailing party" determination by looking to the "substance of the litigation's outcome", *Ross v. Horn,* 598 F.2d 1312, 1322 (3rd Cir.1979), and in *Abraham v. Pekarski,* 728 F.2d 167, 175 (3rd Cir. 1984) found that although a plaintiff did not prevail on all of the legal theories he advanced, he was nevertheless entitled to a fee award because "he obtained the relief he sought." Other circuits have inquired as to whether the litigation achieved some "benefit" the parties sought in bringing suit. *See, e.g. Nadeaux v. Helgemoe, supra,* at 279; *Gingras v. Lloyd,* 740 F.2d 210, 212 (2nd Cir. 1984).

In *Bonnes v. Long,* 599 F.2d 1316 (4th Cir. 1979) the Fourth Circuit, which also utilizes the "any significant issue"analysis, offered guidelines for the resolution of the "prevailing party" question.

> This inquiry is properly a pragmatic one of both fact and law that will ordinarily range outside the merits of the basic controversy. Its initial focus might well be on establishing the precise factual/legal condition that the claimant has sought to change or affect so as to gain a benefit or be relieved of a burden. With this condition taken as a benchmark, inquiry may then turn to whether as a quite practical matter the outcome, in whatever form it is realized, is one to which the plaintiff fee claimant's efforts contributed in a significant way, and which does involve an actual conferral of benefit or relief from burden when measured against the benchmark conditon.

Id. at 1319

Even this relaxed standard affords the Petitioner no comfort. The condition that the claimant sought to change was the alleged actual racial discrimination in the awarding of jobs on the waterfront. He failed to show that this discrimination existed.

Neither can he demonstrate that he enjoys a tangible benefit from the merger ordered by the Appeals Court. The merger was ordered for the purpose of removing the "threat" of discrimination in the allocation of longshoremen's jobs among whites and blacks. But the imminence of this threat was never demonstrated by the Petitioner. In fact, the Court of Appeals found that it was the Petitioner's own failure to present himself for work which resulted in his lower-than-average employment, and that no action of the defendants had deprived the Petitioner of any benefit. *Bailey v. Ryan Stevedoring Company, Inc.*, 528 F.2d 551, 555 (5th Cir. 1976).

In *Harrington v. Vandolia-Butler Board of Education* 585 F.2d 192 (6th Cir. 1978) the Sixth Circuit, which also uses the "central issue" test, (*see, Kentucky Association for Retarded Citizens v. Conn*, 718 F.2d 182 (6th Cir. 1983)) denied attorney's fees to a plaintiff who, although she successfully showed that she was discriminated against on the basis of sex, could not show entitlement to any relief under Title VII §706(k) in the nature of compensatory damages.

Plaintiff Harrington proved her allegations but, because she could not show entitlement to relief, went uncompensated for legal fees. Plaintiff Bailey proved nothing that would have entitled him to relief and should similarly be unrewarded. His "relief" in this matter was fashioned by the Court of Appeals for a threat of harm perceived by the Court but unproven by the Petitioner.

The factual condition that the Petitioner sought to change was the alleged actual racial discrimination against him individually and against the class of black persons he sought to represent. That his claims were not common to the class is eloquently demonstrated by the fact that almost his entire union's membership opted out of his lawsuit and denied that the segregation of the unions was involuntary. *Bailey, supra* at 553.

The central issue test used by the Fifth Circuit, as it has been applied, does not lead to radically different results than does the "any significant issues" test used in other Circuits. Further, the use of the "any significant issues" test would not have resulted in a different holding on the attorney's fees award question in this matter. There is, therefore, no need of further review.

B. Special Circumstances Exist in this Case, Justifying the Denial of an Attorney's Fee Award.

It is indisputable that the Respondents had not the slightest culpability with respect to the Petitioner's claims of racial discrimination. Petitioner failed to prove that he was discriminated against on the basis of race by either the Unions or the stevedoring companies, failed to show that his grievance was maintainable as a class action and failed to show that there was any actual discrimination as a result of the 50/50 hiring rule used by the Respondent Unions and Companies. *Baily v. Ryan Stevedoring Co., Inc.*, 528 F.2d 551 (5th Cir. 1976).

The mandate for the merger of the Local Unions was in the nature of a *sua sponte* recognition by the Court of Appeals that a potential for discrimination existed, that a threat of a violation of 42 U.S.C. 2000e-2(c)(2) was present. *Bailey, supra* at 557.

A prevailing plaintiff in a Title VII suit "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enterprises,* 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968).

Respondents submit that the facts of this case present precisely those "special circumstances" which would render an award of fees against them unjust.

The Respondent Unions cannot be charged with constructive knowledge of what the Fifth Circuit found to be a violation of Title VII when the parameters of the violation had not yet been established in the Circuit. Despite Petitioner's failure to prove actual discrimination as a result of the maintenance of separate local unions, the Fifth Circuit remanded this matter to the District Court for entry of an injunction merging the unions. *Bailey, supra* at 557. In so ruling, the Fifth Circuit denied that it needed to reach the issue of whether the maintenance of separate local unions constituted a *per se* violation of 42 U.S.C. 2000e-2(c)(2). But this denial was far from clear to at least one Fifth Circuit Judge, *see, Bailey v. Ryan Stevedoring Company, Inc.,* 533 F.2d 976 (5th Cir. 1976), dissenting opinion of Clark, J., and one District Judge, who concluded that the Fifth Circuit had, in fact, adopted a *per se* rule in *Bailey* despite its denial. *Williams v. New Orleans Steamship Association,* 466 F.Supp. 662, 680 (E.D. LA 1979), rev'd on other grounds, 673 F.2d 742 (5th Cir. 1982)

Blamelessness on the part of a party litigant sought to be cast for a fee award has been found to be a special circumstance justifying the denial of the fee award. In *Chastang v. Flynn & Emrich Co.,* 541 F.2d 1040 (4th Cir. 1976) a fee award was denied to successful sex discrimination plaintiffs on the basis that the defendants had no right to unilaterally alter the offending retirement fund plan, no

economic incentive to violate the law and had acted "with reasonable dispatch [to correct the plan's offensive provisions] as soon as a murky area of the law was clarified." *Id.* at 1045. *Accord, Staten v. Housing Authority of the City of Pittsburgh,* 638 F.2d 599 (3rd Cir. 1980); *Joseph L. v. Office of Judicial Support,* 638 F.Supp. 833 (E.D. Pa. 1986).

It is clear from the record in this matter that the over whelming majority of the members of Local 1830, the "Black" local, for whose ostensible benefit the merger was mandated, neither sought nor desired merger with the "White" local. *Bailey v. Ryan Stevedoring Company, Inc.* 528 F.2d 551, 553 (5th Cir. 1976). Nevertheless, once merger was ordered, merger was had expeditiously, save for the "numerous problems caused by the plaintiff". *Bailey v. Ryan Stevedoring,* U.S.D.C. M.D.La. Civil Action No. 71-79-B, Petition for Writ of Certiorari Appendix "I". A further indication of the lack of the depth of Petitioner's own desire for merger can be had by an examination of Appendix "0" of the Petition for Writ of Certiorari which shows that the Petitioner never filed a charge of discrimination against the "White" local, 1833, with the E.E.O.C., and accused his own Local, 1830, only of conspiring with stevedoring companies to refuse him employment because he had attempted to "obtain equality of employment for negroes".

It is clear from the opinion of the District Judge that the goal of the Petitioner's action was the advancement of his personal political ambitions within the Union. The District Judge observed that even in the face of compliance with the Fifth Circuit's merger mandate the Petitioner interposed objections out of frustration at his inability to be elected Union President, and that he "did what he could to interfere with the orderly merger of the two unions". *Bailey v. Ryan Stevedoring Company, Inc.,* U.S.D.C. M.D.La. Civil Action NO. 71-79-13, Opinion of Polozola,

Distsrict Judge, Petition for Writ of Certiorari, Appendix "I". The plaintiff's self-centered attitude throughout the course of the litigation had previously been remarked upon by the Fifth Circuit. *Bailey v. Ryan Stevedoring Company, Inc.*, 528 F.2d 551, 555, 556 ftn. 10, (5th Cir. 1976).

At least one court has noted that a failure to seek amicable resolution of a grievance can be a factor in denying an attorney's fee award to a prevailing party. *See, Naprstek v. City of Norwich*, 433 F.Supp. 1369, 1370 (N.D.N.Y. 1977) (attorney's fees award denied to successful plaintiffs whose challenge to an "antiquated" city ordinance was "more contrived than real").

Respondents submit that the Distsrict Judge, who oversaw the merger of these local unions and who duly noted the Petitioner's obstructionist, recalcitrant behavior in his reasons for denial of the attorney's fee award request, has sufficiently set forth special circumstances justifying that denial.

C. The District Court Properly Exercised its Discretion in Denying Petitioner's Claim for Attorney's Fees.

In *Hensley, supra* at 1941, this Court recognized that the District Court has a "superior understanding of the litigation" insofar as the exercise of discretion in calculating the amount of an award of attorney fees.

Respondents respectfully submit that although it has been held that the "court's discretion to deny a fee award to a prevailing plaintiff is narrow", *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68, 100 S.Ct. 2024, 2033, 64 L.Ed.2d 723 (1980), due consideration should be given to the District Court's superior

opportunity to evaluate the demeanor and deportment of the party claimant. Respondents further submit that no abuse of discretion has occurred in this instance.

CONCLUSION

This Court has, in the recent past, declined to offer a more specific test of prevailing party status than those tests currently used by the various Federal Circuit Courts. See, e.g. *Uviedo v. Steve's Sash & Door Company,* Petition for Writ of Certiorari denied, —U.S.- 106 S.Ct. 791 (1986), *Kentucky v. Graham,* —U.S.- 105 S.Ct. 3099, 3105 ftn. 9, (1985).

Respondents submit that, in the case at bar, the central issue test employed by the United States Court of Appeals, Fifth Circuit, in conjunction with the "special circumstances" of this litigation, has worked no inequity on Petitioner in resulting in a denial of an award of attorney's fees.

The Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED,
GARDNER, ROBEIN & HEALEY

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16th day of June, 1987 served a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

GILBERT R. BURAS, JR.

(4)

Supreme Court, U.S.
FILED
JUN 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1607

In the Supreme Court of the United States

OCTOBER TERM, 1986

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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12 pp

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Ryan-Walsh Stevedoring Company, Inc. (formerly, Ryan Stevedoring Co., Inc.), certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Alton J. Bailey
Johnnie A. Jones, Esq.
Ryan-Walsh Stevedoring Company, Inc.
Mathews, Atkinson, Guglielmo, Marks & Day
Rogers Terminal and Shipping Corporation
Gardner, Robein & Healey
Louisiana Stevedores, Inc.
Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman
Ramsay, Scarlett and Company, Inc.
Baton Rouge Marine Contractors, Inc.
Local 1830 and Local 1833, General Longshore Workers, International Longshoremen's Association, AFL-CIO
Baton Rouge Steamship Association

BY ATTORNEYS:
MATHEWS, ATKINSON,
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By: _____

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TABLE OF CONTENTS

Certificate of Interested Persons.....i
Table of Contents.....ii
Table of Authorities.....iii
Statement of the Case.....1
Summary of Argument.....3
Argument.....4
Conclusion.....6
Certificate of Service.....7

TABLE OF AUTHORITIES

Cases — Page

Bailey v. Ryan Stevedoring Co., Inc., 613 F.2d 588 (5th Cir. 1980) 3

Bailey v. Ryan Stevedoring Co., Inc., 528 F.2d 551 (5th Cir. 1976) 2

Bailey v. Ryan Stevedoring Co., Inc., 443 F.Supp. 899 (M.D. La. 1978) 2

Thomas v. J. C. Penney Co., Inc., 531 F.2d 270 (5th Cir. 1976) 5

Williams v. New Orleans Steamship Association, 446 F.Supp. 662 (E.D. La. 1981), rev'd on other grounds, 673 F.2d 742 (5th Cir. 1982) 5

Statute

42 U.S.C. §2000e-5(k) 4

NO. 86-3604

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ALTON J. BAILEY,

Petitioner

VERSUS

RYAN STEVEDORING COMPANY, INC., ET AL

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RYAN STEVEDORING COMPANY, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The plaintiff, Alton J. Bailey, filed a civil rights action against several stevedoring companies and two local longshoremen's unions at the Port of Baton Rouge, Louisiana on March 11, 1971. On behalf of himself and "others similarly situated," the plaintiff sought injunctive relief, declaratory judgment, and back pay. The plaintiff further sought to have the all black union, Local 1830, General Longshore Workers, International Longshoremen's Association, AFL CIO, merged with the all white union, Local No. 1833. (R-1).

The case was tried on April 8, 1974 and the district court, in written reasons on April 23, 1974, found that there was no employment discrimination on the part of any of the defendants, and particularly found that plaintiff had in no way been discriminated against by any of the defendants. The district court further concluded that the claims of the plaintiff were entirely individual in nature and denied the plaintiff the class action which he had attempted to bring under Rule 23 of the Federal Rules of Civil Procedure. (R 132-47).

The court of appeals affirmed the district court in part and reversed in part. The court of appeals agreed with the district court finding that plaintiff was not the victim of individual discrimination and additionally did not have the requisites to qualify him as a representative for a class action. But the court of appeals went on to conclude that while the hiring practice of defendants dividing and allotting jobs on a 50-50 basis between the members of the two unions, which unions each had approximately the same number of members, did not result in discriminatory hiring, nevertheless the 50-50 hiring practice represented a *possible future threat* of discrimination if the numerical membership of the two unions changed, and then proceeded to remand the case to the district court with a mandate that a permanent injunction issue enjoining the continued operation of the two segregated local unions. Thus, the court of appeals agreed that the plaintiff had no meritorious individual claim, and that he could not represent anyone in this suit except himself. *Bailey v. Ryan Stevedoring Co., Inc.*, 528 F.2d 551 (5th Cir. 1976).

On remand, the district court modified the court of appeals' mandate in view of its interpretation of an intervening Supreme Court decision, and refused to order the merger of the two unions. *Bailey v. Ryan Stevedoring Co., Inc.*, 443 F.Supp. 899 (M.D. La. 1978). The court of appeals

reversed the district court and reiterated the mandate requiring the merger. *Bailey v. Ryan Stevedoring Co., Inc.*, 613 F.2d 588 (5th Cir. 1980).

On June 14, 1983, plaintiff filed a motion seeking an award of reasonable attorney's fees claiming that he was the "prevailing party" as to all defendants. All defendants except Ryan opposed the motion. By minute entry of July 19, 1984, the district court granted a motion to dismiss the claim for attorney's fees as to Rogers Terminal and Shipping Corporation, Ramsay Scarlett and Company, Inc., Louisiana Stevedores, Inc., and Baton Rouge Marine Contractors, Inc. (R 602). Ryan thereafter filed its motion to dismiss the claim for attorney's fees on July 23, 1984. On August 6, 1984, plaintiff sought an order making the July 19, 1984 minute entry a final judgment for appeal purposes since the district court had not yet ruled on the attorney's fees issue as to Ryan and the two defendant unions. (R 636). There was no additional activity in this case until July 8, 1986, when the district court rendered written reasons concluding that plaintiff was not the "prevailing party" as to all defendants and therefore denied any recovery of attorney's fees. (R 643-47).

On July 10, 1986, Judgment was entered making this a final judgment for appeal purposes as to all defendants. (R 648).

Plaintiff appealed from that judgment. (R 649).

The court of appeals affirmed.

SUMMARY OF ARGUMENT

All of the courts who have heard this case have found that plaintiff did not have a valid individual claim, and that he did not have the requisites to qualify him as a representative for a class action. Further, the court of appeals had

originally concluded that the manner in which the two segregated unions were providing and allotting jobs on a 50-50 basis *did not* result in discriminatory hiring, but nevertheless represented a *possible future threat of discrimination* if the numerical membership of the two unions should change, and for that reason mandated a permanent injunction enjoining the continued operation of two segregated local unions. Based upon the minimal relief granted in this case, and only against the two unions, the district court and court of appeals were completely correct in concluding that the stevedoring companies including Ryan, could not be required to pay attorney's fees to the plaintiff since the plaintiff was not a "prevailing party". Thus, there is no necessity for this Court to grant a Writ of Certiorari in this case.

ARGUMENT

The district court and court of appeals were correct in holding that the plaintiff was not a "prevailing party" as to Ryan and was not entitled to any attorney's fees as against Ryan, and this case does not warrant the granting of a Writ of Certiorari. The relevant statutory provision for the court of appeals' consideration is §706(k) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(k), which reads as follows:

> "In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person."

No relief whatsoever was granted against Ryan in this case. The plaintiff lost his individual claim of

discrimination. Further, the plaintiff did not have the requisites to qualify him as a representative for a class action. The only relief granted in the case was an order prohibiting the continued operation of the segregated local unions. Thus, plaintiff was not a "prevailing party" as to Ryan and is not entitled to recover attorney's fees from it. In *Thomas v. J. C. Penney Co., Inc.*, 531 F.2d 270 (5th Cir. 1976) the court held that a plaintiff who loses his or her case is not a "prevailing party" and cannot recover attorney's fees, whether or not the evidence justified prosecution of the action.

Williams v. New Orleans Steamship Association, 446 F.Supp. 662 (E.D. La. 1981), rev'd on other grounds, 673 F.2d 742 (5th Cir. 1982), was a case similar to this one. The plaintiff sued racially identifiable unions and several stevedoring companies in the Port of New Orleans. The district court initially dismissed the claims against the stevedoring companies, and ordered the unions to merge. While the case was in that posture, the issue of attorney's fees was presented. The plaintiffs acknowledged that they were not "prevailing parties" as to the stevedoring companies and the Court assessed attorney's fees against the unions only.

The district court in the instant case clearly recognized that fact when it stated:

> "named as defendants in the original suit were the unions and several stevedoring companies. *This court previously found that the stevedoring companies were not liable for attorney's fees since they had nothing to do with the operation of the unions and had no voice in determining whether there should be a merger of the unions. Furthermore, these companies were not guilty of any discrimination against the plaintiff* or the union. Thus, these companies cannot be required to pay

attorney's fees to the plaintiff whether plaintiff is a prevailing party or not." (Emphasis added). (R 646).

Additionally, the record demonstrated that Ryan ased all operations in the Port of Baton Rouge in May 9, some two years prior to the institution of this suit, and did not resume activities at anytime pertinent eto. For that additional reason the denial of an award of orney's fees against Ryan by the district court and the rt of appeals was correct.

CONCLUSION

Considering the decision of the district court and the rt of appeals, the entire record in this case, and the ap- able law, Ryan respectfully submits that the district rt's dismissal of plaintiff's claim for attorney's fees inst the stevedoring companies and the court of ap- s' affirmance of that dismissal was correct, and efore, the Petition for a Writ of Certiorari with respect he claims against Ryan Stevedoring Company, Inc. uld be denied.

BY ATTORNEYS:
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Defendant, Ryan-Walsh Stevedoring Company, Inc., has this day beem served, by mail, postage prepaid, upon all counsel of record.

Baton Rouge, Louisiana, this _____ day of June, 1987.

_____

Thomas E. Balhoff